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SEASONAL FARMWORKER POWERLESSNESS

HEARINGS
BEFORE THE
SUBCOMMITTEE ON MIGRATORY LABOR
OF THE
COMMITTEE ON
LABOR AND PUBLIC WELFARE
UNITED STATES SENATE
NINETY-FIRST CONGRESS
FIRST AND SECOND SESSIONS
ON
FARMWORKER LEGAL PROBLEMS

AUGUST 8, 1969

PART 4-B

Printed for the use of the Committee on Labor and Public Welfare



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WASHINGTON : 1970

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FORMAT OF HEARINGS ON MIGRANT AND SEASONAL FARMWORKER POWERLESSNESS

The Subcommittee on Migratory Labor conducted public hearings in Washington, D.C., during the 91st Congress on "Migrant and Seasonal Farmworker Powerlessness." These hearings are contained in the following parts:

<i>Subject matter</i>	<i>Hearing dates</i>
Part 1: Who are the Migrants?-----	June 9 and 10, 1969
Part 2: The Migrant Subculture-----	July 28, 1969
Part 3-A: Efforts to Organize-----	July 15, 1969
Part 3-B: Efforts to Organize-----	July 16 and 17, 1969
Part 4-A: Farmworker Legal Problems-----	Aug. 7, 1969
Part 4-B: Farmworker Legal Problems-----	Aug. 8, 1969
Part 5: Border Commuter Labor Problems-----	May 21 and 22, 1969
Part 6: Pesticides and the Farmworker-----	Aug. 1, Sept. 29 and 30, 1969
Part 7: Manpower and Economic Problems-----	Apr. 14 and 15, 1970
Part 8: Who is Responsible?-----	July 20, 21, and 24, 1970

Additional hearings are tentatively scheduled by the subcommittee during the second session, 91st Congress.

CONTENTS

CHRONOLOGICAL LIST OF WITNESSES

AUGUST 8, 1969

	Page
Garcia, Dr. Hector P., Commissioner, U.S. Commission on Civil Rights, Corpus Christi, Tex.; accompanied by Lawrence B. Glick, Acting General Counsel; and Jonathan Fleming, special assistant to the staff director-----	1520
Lorenz, James D., associate director, California Rural Legal Assistance Program, Los Angeles, Calif.-----	1585

STATEMENTS

Garcia, Dr. Hector P., Commissioner, U.S. Commission on Civil Rights, Corpus Christi, Tex.; accompanied by Lawrence B. Glick, Acting General Counsel; and Jonathan Fleming, special assistant to the staff director-----	1520
Prepared statement, with attachments-----	1552
Lorenz, James D., associate director, California rural legal assistance program, Los Angeles, Calif.-----	1585
Prepared statement-----	1585

ADDITIONAL INFORMATION

Articles, publications, etc.:

"A Fired Teacher's Victory in Court—Job Restored," from the San Francisco Chronicle, April 5, 1969-----	1596
"Columbia Journal of Law and Social Problems," March 1968-----	1726
"Court Opens Door for Challenge on Employees of Illegal Aliens," from the Los Angeles Times, July 23, 1969-----	1590
"Court Rules Salinas Man Can Refuse Job Because of Unsanitary Conditions," from the Salinas Californian, Salinas, Calif., July 4, 1969-----	1591
"Court Upholds Jobless Man's Right To Refuse Farm Work—Unsanitary Conditions Cited," from the Los Angeles (Calif.) Times, July 4, 1969-----	1593
"CRLA-IID Suit Top '68 Story—Quake, Animals Highlight Year," from the Imperial Valley Press, El Centro, Calif., January 1, 1969-----	1598
"Farm Worker Cannot Be Fired for Union Activity, Court Rules—Precedent-Setting Appellate Decision Handed Down in Case in Which Nine Brought Suit Against Salinas Growers," from the Los Angeles Times, July 31, 1969-----	1589
"In Memoriam," from the Corpus Christi Caller-Times, Nov. 11, 1968-----	1546
"Issue Focuses on Field Sanitation—Toilets too Filthy To Use," from the Register-Pajaronian, Watsonville, Calif., April 12, 1969-----	1596
"Justice for the Rural Poor Through California Rural Legal Assistance"-----	1695
"Legal Services Group Sues To Aid Farm Workers"-----	1601
"Mexican-Americans and the Administration of Justice in the Southeast," by the U.S. Commission on Civil Rights-----	1931
"Minimum Wage Order Creates Dilemma," from the Modesto Bee, Modesto, Calif., December 15, 1968-----	1599
"Pay Women More, Growers Ordered," from the Los Angeles Times, November 15, 1968-----	1600
"Report of the Project Director," Camden Regional Legal Services, Inc., Farm Worker Division-----	1779

"Rural California: Hope Amidst Poverty"-----	1885
"Stranger in One's Land," by U.S. Commission on Civil Rights-----	1829
"The Hyphenated Americans—Citizens for a Century Squabble Over an Image," from the Houston Chronicle, December 2, 1968-----	1539
"The Texas Observer," reprint of issue of July 4, 1969-----	1568
"The $\frac{3}{4}$ Rule for School Bond Issues," from the San Francisco Chronicle, June 14, 1969-----	1593
"Time To End 'Don't Work' Welfare Rule," from the Independent, Long Beach, Calif., March 28, 1969-----	1597
"To Him That Hath * * *," from the Nation, New York, N.Y., July 7, 1969-----	1591
"Unruh Pleads for Farm Workers Unemployment Insurance," from the Sacramento Bee, Sacramento, Calif., April 24, 1969-----	1595
"Unsanitary Conditions Cited—Court Upholds Jobless Man's Right to Refuse Farm Work," from the Los Angeles (Calif.) Times, July 4, 1969-----	1588
"U.S. Court Demands Food for Hungry Californians," from the San Francisco Examiner, December 31, 1968-----	1598
"Working With the 'System,' the Progress of United Farm Workers (Obreros-Unidos) Under Wisconsin Law," by David Loeffler, at- torney at law, Milwaukee, Wis.-----	1900
"56 Counties Now Use Federal Food Aid Plan—Butte and Sierra Only Ones To Turn Down Program for Poor," from the Los Angeles Times, May 15, 1969-----	1594
California Rural Legal Assistance, annual report of-----	1603
Selected charts:	
Percentage of Spanish surnamed families with income less than \$3,000 in certain selected counties in Texas-----	1524
Total Spanish surname population of certain selected counties in Texas-----	1522
Travel patterns of seasonal migratory agricultural workers-----	1521
U.S. Commission on Civil Rights, staff, report of-----	1704

MIGRANT AND SEASONAL FARMWORKER POWERLESSNESS

(Farmworker Legal Problems)

FRIDAY, AUGUST 8, 1969

U.S. SENATE,
SUBCOMMITTEE ON MIGRATORY LABOR OF THE COMMITTEE
ON LABOR AND PUBLIC WELFARE,
Washington, D.C.

The subcommittee met at 9:30 a.m., pursuant to recess, in room 4232, New Senate Office Building, Senator Walter F. Mondale (chairman of the subcommittee) presiding.

Present: Senators Mondale (presiding) and Yarborough.

Committee staff members present: Boren Chertkov, counsel to the subcommittee; Sidney Johnson, professional staff member; Eugene Mittelman, minority counsel.

Senator MONDALE. The Senate Subcommittee on Migratory Labor will come to order.

This morning we continue hearings on the legal problems and civil rights of the farmworker. Our first witness this morning is Dr. Hector Garcia, Commissioner, U.S. Commission on Civil Rights, and he will be accompanied by Laurence Glick and Jonathan Fleming.

The chairman of the full committee is with us, Senator Yarborough, and I understand you would like to introduce our next witness.

Senator YARBOROUGH. Dr. Garcia, will you come around please.

Mr. Chairman, it is an honor and pleasure to introduce this distinguished witness and particularly to a Migratory Labor Subcommittee that now has become a permanent subcommittee of this full committee. No longer do we live from hand to mouth, year to year with this Migratory Labor Subcommittee, but under your able leadership this subcommittee will rise to new heights of performance and standards, in my opinion.

I want to congratulate you on this meaningful series of hearings that you have held on the problems of migratory labor, which are not new to you. You have worked on it for years before you became chairman of the subcommittee.

You have been to the Rio Grande Valley of Texas, to the gates of border crossing where green carders crossed. You have marched in the Imperial Valley with Cesar Chavez. You have not only studied the problems of migratory labor, you have been out and lived the problem.

Senator MONDALE. I should say when we were marching in California, we had a hard time keeping up with Senator Yarborough.

Senator YARBOROUGH. It is an honor to say that Dr. Hector Garcia has long been a leader in Texas in the movement for equal rights of minorities. He came back from World War II as a medical officer, where he was commander of an Army unit in Italy. He was a medical doctor and high-ranking officer there. When he returned he turned his attention not to country clubs where they welcomed him in, but instead he turned his attention immediately to the problems of the poor, and this wasn't as popular in 1946 as it is today.

When he got little support from other quarters, he went out and founded "The American GI Forum," which is a family veterans organization primarily. I happen to be an honorary life member of it. They will let you in if you want to be there. They don't discriminate.

They organized the American GI Forum and it has chapters in some 30 States. It has been a very effective organization in our State, supporting progressive causes for better legislation generally for those who need better education, working opportunities, and general social and economic opportunities in the country. His record is so distinguished and so long I would take up the morning hearing if I recited all of it.

I have been acquainted with him since 1946, which is 23 years ago. All of his great record as a medical doctor, the many charities he has handled, and all of the good work he does is almost incredible. I know personally he practiced medicine all day and in the earlier years would drive in his car to see patients until 1 or 2 o'clock in the morning.

Dr. Garcia, it is an honor to see you here. You have held in these past 8 years numerous appointments from the President of the United States as Special Ambassador to the West Indies, to sign treaties, and as their special representative and Ambassador to the U.N.

Dr. Hector Garcia's work has been recognized, so it is not strange that he has been appointed by the President of the United States to many different duties for this Nation now as Commissioner on the U.S. Commission for Civil Rights.

Senator MONDALE. Thank you, Mr. Chairman. We are delighted to have that introduction and we are delighted to have these witnesses here this morning.

You may proceed, Dr. Garcia by reading your statement or summarizing parts of it however you wish.

STATEMENT OF DR. HECTOR P. GARCIA, COMMISSIONER, U.S. COMMISSION ON CIVIL RIGHTS, CORPUS CHRISTI, TEX.; ACCOMPANIED BY LAWRENCE B. GLICK, ACTING GENERAL COUNSEL; AND JONATHAN FLEMING, SPECIAL ASSISTANT TO THE STAFF DIRECTOR

Dr. GARCIA. Thank you, Senator Yarborough, and thank you, Senator Mondale.

Mr. Chairman and members of the subcommittee, my name is Hector P. Garcia and I am a member of the U.S. Commission on Civil Rights. In my private capacity I am a physician in Corpus Christi, Tex. I appreciate the opportunity to speak to you about certain issues of concern to Mexican-Americans in the rural areas and small towns of the Southwestern States.

Since the fall of 1967, the Commission has been studying the administration of justice in the Southwest, particularly as it affects Mexican-Americans. This study, now nearly completed, has examined the extent to which Mexican-Americans are subject to discriminatory treatment by law enforcement officers, excluded from jury service, denied equal access to bail and adequate counsel, and employed in disproportionately low numbers in law enforcement agencies.

In the course of this study, Commission staff attorneys conducted investigations in the latter part of 1967 and in 1968, interviewing approximately 450 persons in Arizona, California, Colorado, New Mexico, and Texas. Persons interviewed included private citizens, law enforcement officers, probation officers, prosecuting attorneys, judges, public defenders, attorneys in private practice, and leaders of Mexican-American organizations.

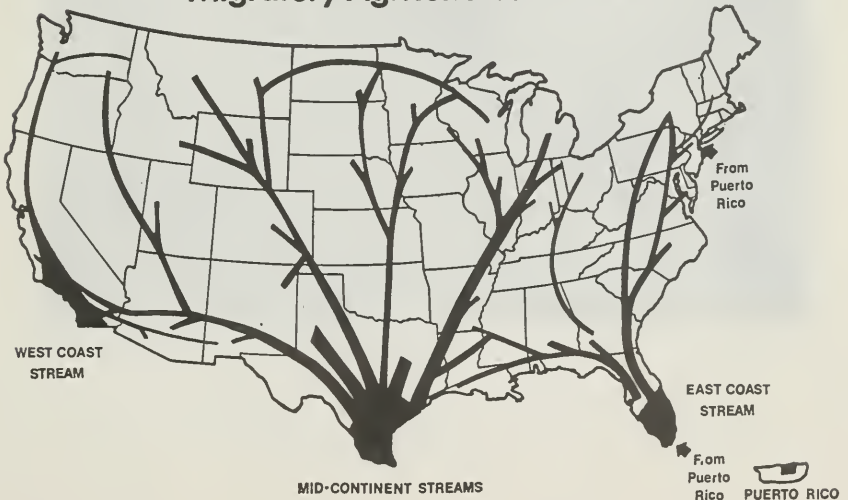
Two meetings of Commission State advisory committees were held in New Mexico and one in California in 1968, specifically to gather information for this study. Questionnaires were mailed to nearly 800 law enforcement agencies in the Southwestern States. Finally, the Commission held a hearing in San Antonio, Tex., in December 1968, which dealt exclusively with the problems of Mexican-Americans.

A report based on this study and these hearings will be released shortly. Although the Commission's research has not focused only on migrant farmworkers, much of the information obtained relates to the rural areas in which many migrants live and work and a number of incidents and situations reported to the Commission staff, specifically, involve migrants.

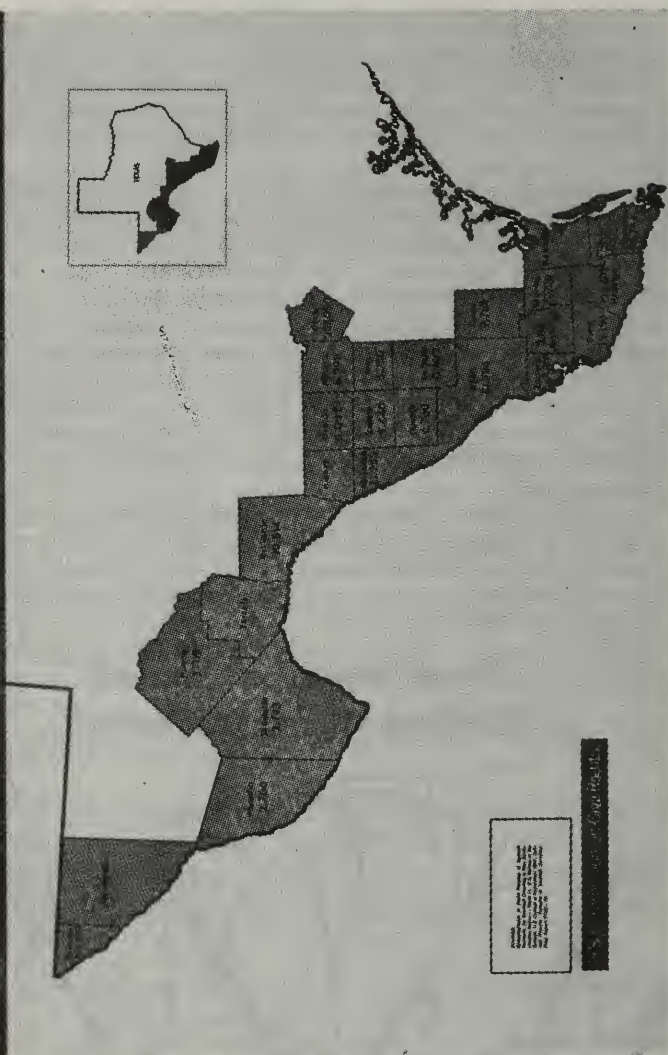
We have and would like with your permission to present several maps. The first maps show travel patterns of seasonal migratory workers. You have three main streams, as you well know. The west coast stream, midcontinent stream and east coast stream are indicated.

(The maps referred to follow:)

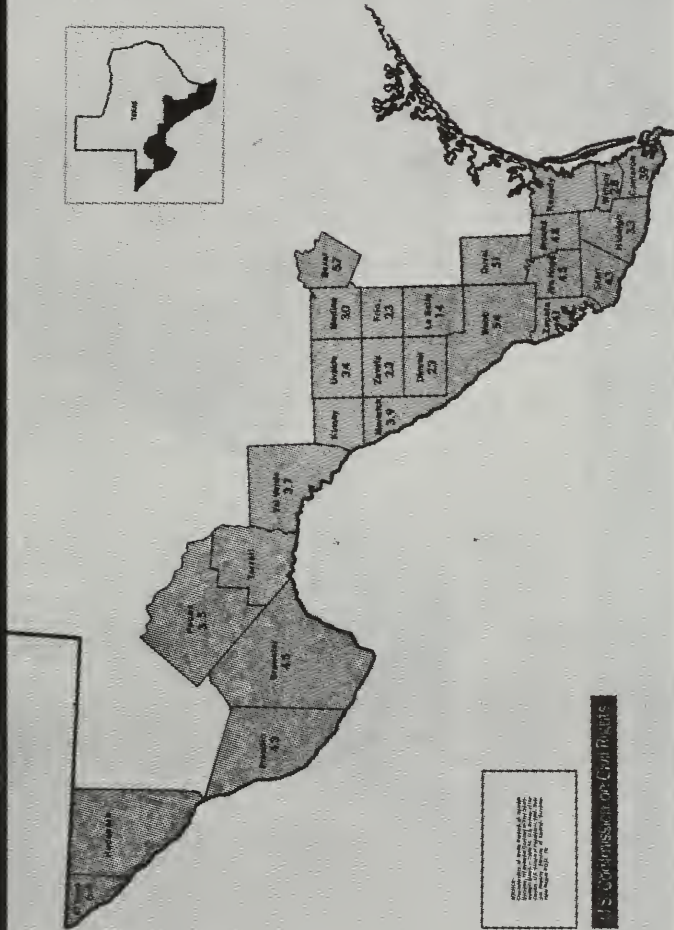
Travel Patterns of Seasonal Migratory Agricultural Workers



Total Spanish Surname Population of Certain Selected Counties in Texas



Median School Years Completed in Certain Selected Counties in Texas



Percentage of Spanish Surnamed Families with Income Less than \$3,000 in Certain Selected Counties in Texas



Dr. GARCIA. The east coast involves some Puerto Ricans. The mid-continent is the main stream. Another supply area is our own southern part of Texas and the west coast stream also includes Mexican-Americans. Therefore, we see rapidly that the main supply of migratory workers of the United States are my brothers and sisters, the Mexican-American in south Texas.

The second map shows you a concentrated population of Mexican-American in South-Texas.

Senator YARBOROUGH. Would you hesitate for one point.

Some years ago we were having hearings and we were studying migratory labor. We were told then that members of the Mexican-American community from south Texas went into the vegetable fields of New Jersey and lower New York State for a while, but finding it so far back home to Texas, that in the winter they went to southern Florida and then back.

Do you know whether that east coast stream is basically from Puerto Rico or are there a number of Texans living over there?

Dr. GARCIA. Yes, sir; there are a good number of Texans in that area over there.

Senator YARBOROUGH. They go down the east coast to warm areas of Florida.

Dr. GARCIA. That is correct. Some come back. I think 2 years ago we had instances of some workers getting killed in an accident in Florida.

Senator YARBOROUGH. You know some Texas Mexican-Americans did go to Florida?

Dr. GARCIA. Some do go there and come back and they still do today.

Senator YARBOROUGH. Thank you. Proceed, Doctor.

Dr. GARCIA. The second map shows total Spanish surnamed population of certain selected counties in Texas and I brought this to show you that there is a great number of them. A lot live in the counties around the center area such as Kinney, Maverick, Duval, and so forth. Most of those people depend on migrant seasonal work, because the crops of that area are over in the short length of time.

The third map is the median school years completed by Spanish surnamed in certain selected counties in Texas. I would like to rapidly point out that this is the terrible educational situation of the Mexican-American, which even today is in a deplorable state in Texas. You have the name in this map of the counties and the number underneath this gives you median school years completed by Mexican-Americans in that county.

You take a county like La Salle, it is fantastic but true that in 1960 the median educational level is only 1.4 of school, not even one and a half years of school. And in Frio it is $2\frac{1}{3}$, and Medina it is only 3 and Zavala it is only $2\frac{1}{4}$. Therefore, the four counties will average less than 2.3 grades of school.

Certainly by any Federal standard, we can say that most of this area has thousands who are functional illiterates. I think sometimes the numbers and averages even here are a little too high because by the time the census reports are taken, many of our migratory people have left, and are working in some other parts of the Nation.

We see poverty in the map in its worse form. I have always questioned why is it that in some other parts of the Nation we drew the standard of \$3,300 as the determining factor of affluency. In Texas we use \$3,000, which is now used in other States.

I think that \$3,300 level would throw us into 90 percent poverty level. I would like to point out to you that there are a very great percentage of Spanish surnamed families with incomes less than \$3,000 in certain selected counties in Texas. Let us go down to the south Texas area and to Cameron County, which has industry and which is not necessarily poor because of its tourist trade with Mexico. Yet in Cameron County we have 66.7 percent poor Mexican-American families.

List of percentage Mexican-American families with less than \$3,000 follows:

In Willacy County, 71.1; in Hidalgo County, 72 percent; in Starr County, 76.8 percent. In Zapata County it is 75.5; Zavala County, 82.4; Frio County, 80.7; La Salle, 80.1. This is the percentage of people who live in poverty with the \$3,000 or less standard.

What would the results be if we really applied, like we are supposed to apply, the \$3,300 standard? It would be unbelievable. Therefore, there is no question that this is a chronic endemic, poverty area.

I have always said that the Governor should declare this a "disaster poverty area" and do something about it. Surely with the help of the Federal Government and Federal grants and Federal studies this poverty could improve. I think this is a chronic situation that has been so pernicious for so long that more of the people almost always suffer and many children die due to poverty.

So I should like to summarize for you some of the problems encountered in our investigation.

Senator YARBOROUGH. Dr. Garcia, will you hesitate for one question?

You show Starr County has 76.8 percent of the families with Spanish surnames with income less than \$3,000 and Hidalgo County with 72 percent. Starr County is lightly populated, a very poor county, isn't it?

Dr. GARCIA. That's right.

Senator YARBOROUGH. Hidalgo County is very rich and very populated. It is rich in citrus fruits, oil, gas, transportation, and outlets to the Gulf. That is a rich county.

Dr. GARCIA. And also we have international points of entry which carry fantastic amounts of trade.

Senator YARBOROUGH. So there is a vast difference in those counties. Yet Spanish surname persons in Hidalgo do not fare much better than they do in Starr, do they?

Dr. GARCIA. That is correct. Cameron also has a port of entry. I understand recently that they bring oil into Brownsville and detour into Mexico and bring it back to Brownsville to avoid a tax on the oil.

You see, in Hidalgo and Cameron Counties, there is a good income there, a lot of trade. This is a citrus area, with oil, cotton, and so forth, and yet our people live in terrible poverty.

Senator YARBOROUGH. That is what I wanted to point out. We live

in some very poor counties with limited resources with semifarming, except where irrigation is impossible. But when you come to Hidalgo and Cameron, the two together have greater population than Corpus Christi, if you add the two together, and are rich in international trade.

Those ports of entry serve a part of Mexico as well as Texas. It has rich agriculture, oil and gas and many other big tourist trade in the winter.

Thank you. I just thought it would be well to qualify in the record the differences in those counties.

Dr. GARCIA. Thank you. We will discuss No. 1, "police harassment and misconduct."

The most serious issue encountered in the course of the Commission's study is harassment and abuse of Mexican-Americans by law enforcement officers. Such conduct ranges from unjustified arrests to insults, threats and, not infrequently, physical assaults. It has also been found that under existing procedures it is almost impossible for an individual to obtain redress or compensation for such injuries.

In general, in rural areas allegations of police misconduct were commonplace. For example, Mr. Natividad Fuentes, a longtime resident of Uvalde, Tex., told a Commission staff member and myself that in January 1968, he and his wife were returning to their home from a visit with friends in a nearby town. Because of ice on the highway, Mr. Fuentes' car slid into a ditch just outside the city limits of Uvalde.

Shortly thereafter two State highway patrolmen came to investigate. Instead of assisting Mr. Fuentes, who is a small man—only 5 feet 3 inches tall, and weighing about 150 pounds—one of the highway patrolmen jerked him out of the car and hit him over the head with a blackjack, fracturing his skull.

The FBI investigated this case, but no violation of Federal law was found by the Department of Justice. Although the Commission staff does not know the basis for this finding, it had some evidence concerning the inadequacy of the FBI investigation of this case.

According to the victim, he was not interviewed right away. The Commission on Civil Rights transmitted its investigative report to the Department of Justice with a request that the case be looked into further. The Justice Department at the Commission's urging did take further action, including the filing of an information and later an attempted indictment against one of the highway patrolmen, but the Federal grand jury refused to indict and the Justice Department dropped the case.

It is our understanding that as of this spring, Mr. Fuentes—who, incidentally, had no prior arrest record whatsoever—not even a traffic violation—still suffers from dizzy spells as a result of his injuries and has been unable to return to his full-time work for a construction contractor.

Testimony at the Commission's San Antonio hearing indicated that assaults on Mexican-Americans by law enforcement officials in south Texas often go unpunished. According to one witness, in 1965 a Mexican-American resident of a small town in south Texas, who got into an altercation with a sheriff, was beaten on the head with a pistol butt by the sheriff and a local justice of the peace.

Neither local nor Federal action was taken against these officials. According to other witnesses, in June 1968, two women were assaulted by a highway patrolman in Pecos, Tex. The case against the highway patrolman was presented to the local grand jury, but no indictment was issued.

The Commission staff heard several allegations that Mexican-American and Anglo juveniles are not treated equally, that Mexican-American youths who committed the same offense as Anglo youths were more severely punished.

The former chief of police of Las Vegas, N. Mex., told the Commission's State advisory committee that during his period of service between 1962 and 1966 there were two troublemaking gangs, one Anglo and the other Mexican-American, in his community. For the same misconduct, the local officials proposed to charge the Mexican-American youths with criminal offenses and to punish the Anglo youths by suspending some of their school privileges. When the chief insisted that all the offenders be given the same treatment, the matter was dropped.

It is very difficult to obtain a remedy against police abuse in small towns. Procedures are quite informal and usually complaints are handled by the chief of police personally. In small departments he may be working too closely with his men to be able to consider complaints against them objectively.

In some cases, Mexican-Americans are afraid to complain about police abuse because of fear of retaliation. Soon after Mr. Fuentes, whose case was previously described, complained to the Federal Bureau of Investigation about the officers involved in his beating, new charges of speeding were filed against him by local law enforcement officers, in retaliation, he believes, for his action in filing a complaint.

The training and recruitment problems of smalltown police forces may also lead to violations of the rights of Mexican-Americans. The superintendent of a sheriff's office in New Mexico stated that his office was understaffed and the men's pay "embarrassingly low"—\$325 per month for a deputy sheriff.

Law enforcement agencies in the Southwest in cities under 10,000 responding to the Commission questionnaire indicated that 47 percent of the agencies did not have any formal training for officers joining their departments. The result is likely to be poorly trained law enforcement personnel. Moreover, the resources of such agencies are severely strained by the seasonal influx of migrants, perhaps resulting in hostility by officers toward migrant workers.

POLICE ATTITUDES TOWARD MIGRANTS

Rural police officers who were interviewed indicated that they looked on migrants as troublemakers. One police chief in a rural area referred to them as "tramps." In another area, the police used arrests to discourage migrants from coming into town from the local migrant camp.

Employees of the Colorado Migrant Council, an organization established to assist migrants, were also harassed. In 1967 an armed farmer threatened to kill a council employee who had tried to intercede for some migrant workers with whom the farmer was having a dispute.

Although the employee complained to the local police, they refused to bring charges.

In another incident, in Denver, four migrant laborers and an employee of the migrant council were arrested on a charge of assault, which they claimed was false. One of the men has trouble putting his hand down flat because of an injury. As a result of his disability, he was not able to roll his hand properly for fingerprinting.

Commission investigators were told that a Denver police officer smashed him across the knuckles with his night stick in order to make him flatten his hand out for fingerprinting. In addition, the representative of the Colorado Migrant Council who was arrested with the four laborers was questioned by Denver police officers, who reportedly asked him, "What are you doing with these Mexicans?"

In urban areas, Mexican-Americans complained of dragnet stop-and-frisk practices by law enforcement officers—where members of a group are indiscriminately stopped and searched, instead of stopping only those against whom a reasonable suspicion of criminal violation exists. The rural equivalent of this complaint concerns the practice of law enforcement officials of enforcing immigration laws in border areas by stopping Mexican-Americans indiscriminately as "wetbacks" and asking them to show their papers. Several instances were reported in which such persons were arrested and jailed, then released several hours later.

On the other hand, migrants found it difficult to obtain police protection when they needed it. Commission staff heard allegations that local law enforcement officers would not conduct adequate investigations into crimes where migrant workers were the victims, and that law enforcement is generally lax around migrant labor camps.

The situation during the summer of 1967 at the labor camp near Fort Lupton, Colo., is a good example. The town line has been drawn so that the labor camp is just outside the city limits and local police services are not available to the residents of the camp. If the need for police protection arises, they have to call the Weld County sheriff's department in Greeley, Colo., over 25 miles away. Consequently, law enforcement protection in the camp is nonexistent.

INTERFERENCE WITH FARMWORKERS ORGANIZATIONAL EFFORTS

The Commission also received information concerning difficulties of Mexican-American farmworkers in labor union organization and union-management conflicts. This subcommittee is familiar with the events of 1967 in Starr County, Tex., where the Texas Rangers were sent in upon the request of local officials when the United Farm Workers Organizing Committee attempted to organize the farmworkers in that area and to strike against some growers.

Senator MONDALE. Would you yield there, Doctor?

Dr. GARCIA. Yes, sir.

Senator MONDALE. I was surprised in my visit to the Rio Grande Valley to discover the attitude on the part of Mexican-Americans, particularly the migrant workers, toward the Texas Rangers. We watched Texas Rangers on television in Minnesota, and we thought they were the protectors of justice, and the poor, sort of modern ethical Robin Hoods.

But many of the Mexicans had an entirely different view of the Texas Rangers. Indeed, some of them told me that their principal function over the years has been to keep the Mexican-American in his place. The history of Texas Rangers in terms of some of the abuses has been a rather sordid one in terms of police brutality and violence.

Some people told me about what they call a Texas Ranger ride, where a person is arrested and escorted around the State uncere- moniously and incommunicado.

Would you comment on that?

Dr. GARCIA. Certainly I will, Senator Mondale.

I remember that as a child, the word that scared me the most and scared Mexican-Americans in Texas was "Los Rinches are coming" or "Los Rinches were there." This struck horror into all Mexican-Americans from the age of 6 on up.

Now in our examination of one of the rangers in San Antonio, I asked this ranger, "Certainly during your 30 years or so of peace officer's work as a law enforcement officer, you have arrested thousands of people." He said, "That is correct."

I said, "In this 30 years or so of your law officer's work, have you ever got a search warrant, have you ever gone to the justice of the peace or judge and gotten a search warrant?" And the answer was "No."

And this is fantastic that this ranger would have worked 30 years and arrested thousands of people and never have been able to get a search warrant—or arrest warrant.

Even today the word "Rinche," which is the word used by Mexican-Americans, is one that brings fear. Certainly, there are exceptions. I also think that the Rangers are used in places where they have no business. I certainly think that such a situation developed in Crystal City elections in 1965. In that election, I don't think the rangers should have been there.

We had democratic procedures and methods of electing public officials—by majority vote.

Now in all of the counties around Crystal City I pointed out to you on our map, Senator Mondale, that in all of those counties we have majority Mexican-American—Zavala, 82.4 percent; Dimmit, 83; La-Salle, 80.1 and Frio 80.7. In Dimmit County, or any of those four counties, it is over 80 percent—some of them 83 percent and there in Crystal City through normal procedures of democratic principle and changes by two in spite of having to pay the poll tax, we went ahead and had legal elections and thus the mayor and four councilmen Mexican-American, were elected by majority vote in a democratic process.

I think that the election should have stood on its merits and legality and I don't think the rangers should have come into it at all. Because they should not be called to go ahead and interfere with normal elective processes, or conflicts in labor disputes. But in most cases they are the judge, jury, and jailers.

Here they were called up to go into Crystal City and tear down the "Heart" of the democratic processes in the State. This illegal interference I cannot accept at all.

Senator MONDALE. The Texas Rangers are State police; aren't they?

Dr. GARCIA. That is correct.

Senator MONDALE. There is no way that the Mexican-American populations that are affected by the tactics of the Texas Rangers can defend themselves politically. In other words, they can't vote the rangers out of office because none of them are elected or responsive to Mexican-American electorates along the Rio Grande; is that correct?

Dr. GARCIA. That is correct. Of course, when they move, they move into the county courthouse, which in Texas predominantly is Anglo controlled. And from there they run everything and sometimes even the city officials. County officials would not dare disagree with the Texas Rangers. They carry a tremendous amount of power because they are backed by the Governor and they are only directly responsible to the Governor—not to the people.

About 6 years ago out of 900 highway patrolmen, there were only three or four Mexican-Americans; we protested to the Governor, and he talked to the public safety director, but he didn't make any changes. So I don't know who was running the State, whether it was the director of the department of public safety, or whether it was the Governor of the State of Texas.

But the Rangers are powerful people and they are not amenable to suggestion or reason and they are not responsible to the electorate.

Senator YARBOROUGH. I have a question here, Mr. Chairman.

Dr. Garcia, how many Mexican-Americans are there on the ranger force?

Dr. GARCIA. I think there has only been one Mexican-American in over 100 years.

Senator YARBOROUGH. That was one appointed by the late Governor James V. Allred, who appointed the first Mexican-American, and he was Governor in 1930. I happened to have been serving under him.

Dr. GARCIA. Yes; he is the only one. He is retired now.

Senator YARBOROUGH. That is the one appointed by the late Gov. James V. Allred. Please continue.

Dr. GARCIA. In May 1967 the Texas State Advisory Committee to the U.S. Commission on Civil Rights held meetings and after hearing testimony found that the Texas Rangers and local law enforcement officials had harassed members of the United Farm Workers Organizing Committee through physical and verbal abuse and the holding of union organizers in jail for many hours before they were released on bond.

The committee also found that the Texas Rangers had encouraged farmworkers to cross picket lines, and that the harassment and intimidation by rangers of members, organizers, and sympathizers of the Farm Workers Committee gave the appearance that the rangers and local law enforcement officials were in sympathy with the growers and packers rather than being impartial guardians of the law.

Testimony from several witnesses at the Commission's hearings in San Antonio supported the findings of the advisory committee. State law enforcement officials denied the allegations and maintained that they had acted impartially throughout the events in Starr County.

Concerning an 8-month strike by Mexican-American farmworkers at a floral farm in Colorado, in February of this year I personally interviewed several of the women involved in the strike and received complaints from them concerning the conduct of local law enforce-

ment officials. These women alleged that complaints from the struck farmer and his employees against the strikers and their sympathizers were welcomed by local law enforcement officials, while complaints by the striking workers were ignored or were improperly handled and poorly investigated.

I talked to these people personally and what they relate is fantastic. Let me assure the Senators when people who work in those rural farms come into the city, they are subjected to a lot of unnecessary search and seizures and also abuse.

In addition, local ranchers were deputized to help local law enforcement officials handle the strike, and it was alleged that excessive force was used against those strikers who did engage in misconduct. In February 1969 after a local court enjoined pickets from blocking the main gateway to the struck farm—it is a main gate, but other area to the farm is open. There is no continuous fence and certainly a number of openings and gates are available.

Five of the Mexican-American women leading the strike wrapped and tied themselves in a 25-foot chain and fastened it across the main entrance. An employee of the farm cut the chain from the gate, but the women remained snarled in it. Then without a word of warning, a sheriff's deputy approached the women from behind and spread a layer of tear gas over them.

Let me say, Senator, according to the picture I saw when those deputy sheriffs got off the car out of the road away from the farm and farm entrance, they were already wearing gas masks and they were already carrying with them their gas machines.

An early morning fog caused the gas to hang in the air around them, and they fell to the ground unable to escape because of the weight of the chain and their inability to coordinate their movements. Other male picketers, who were standing nearby, dragged the helpless women out of the cloud of gas.

Let me point out on the question of the floral farm, that nothing was done about it. I personally asked for an investigation. I went to the Civil Rights Section of the Attorney General's office personally and asked for an investigation. Later I was told more or less that nothing had been done about it, that they depended on some reports from newspapers or they depended also on reports submitted on any demonstration—picketing or incidents.

I thought it was a travesty of justice that, in spite of my request even then, nobody contacted the poor women. I am greatly ashamed that this is the type of justice they received. I thought at least an investigation would be in order.

Although the Commission staff did not specifically investigate the situation in Delano, Calif., it has received information alleging that the United Farm Workers Organizing Committee has received very little cooperation or protection from local law enforcement officials when strikers and their supporters were harassed by local grape growers and their employees.

A basic thread runs through all these situations—State and local law enforcement officials have acted in a manner designed to aid the farmers and growers and often have interfered with legitimate attempts by union officials and others to organize and strike.

COUNSEL AND BAIL

Since most migrant workers and their families have small incomes, it is particularly difficult for them to obtain private counsel in either civil or criminal cases. Nor can they afford bail and often must remain in jail until they are tried, thus jeopardizing their defense and seriously interfering with their family life and employment.

In serious criminal cases counsel must be appointed for indigent defendants. However, the Commission staff heard many complaints that attorneys appointed for indigent Mexican-American defendants were inexperienced toward their clients and often tried as a matter of course to bargain for a light sentence in return for a plea of guilty rather than adequately and fully represent them.

In some areas there are few, if any, attorneys available at all. In primarily rural Sandoval County, north of Albuquerque, N.M., there was only one lawyer in the entire county, the director of the legal services program. She was not able to represent indigents in criminal matters because of the prohibition contained in the 1967 amendments to the Economic Opportunity Act.

In many rural areas Commission investigators learned that local attorneys were reluctant to handle cases for Mexican-Americans because they did not pay well enough, or because they were "controversial" and might offend an attorney's other clients. At the same time there are many areas in the Southwest with large concentrations of Mexican-Americans that do not have federally funded legal services programs to handle civil matters for indigents. There are very few Mexican-American attorneys practicing law in the Southwest—only 2 percent—and the majority of them are in the large urban areas rather than in rural communities.

The Commission also heard complaints that the system of bail was used improperly against Mexican-Americans. There was testimony that excessive bail and unnecessary bail requirements were used by local law enforcement officials to harass union organizers and their supporters in Starr County in 1967.

Commission staff learned that in some rural communities officials purposely confused Mexican-American defendants to make them think that the hearing to set bail was the trial, so defendants would not appear later for trial, thus forfeiting bail and automatically establishing a criminal record.

In one community in northern Colorado migrant workers were arrested and charged with drunkenness. They then were released on \$75 bail, but trial was set for over 2 months later, long after they would have left the community to go to work elsewhere. Thus, they were forced to forfeit their bail if they moved on to farm work elsewhere.

In the San Luis Valley in southern Colorado, Commission staff members investigated allegations that the misuse of bail and fines by local authorities had resulted in a situation resembling peonage, or involuntary servitude. They were told that during the harvest season local farmers went to the jails in several of the small towns on Monday mornings and inquired about the number of Mexican-American farmworkers arrested over the weekend. The farmers selected the best

workers and paid their fines or posted their bail. Then the men were released in the custody of the farmer and required to repay the money by working for the farmer.

In one community the men were told by the police magistrate that if they did not remain on the farm and work off the amount they owed the farmer, they would be returned to jail. The same magistrate sometimes would give the farmer a "discount." If, for example, the fine or bail were set at \$40, he would require the farmer to pay only \$25, but he would tell the worker that he owed the farmer \$40 worth of labor.

Interviews by Commission members with officials in several communities established that the practice of local farmers paying fines or posting bail for Mexican-American workers was common.

We hear criticism that those Mexican-Americans are not too fluent in English, but let me be honest with you. The whole system of education in Texas, since Texas became a Republican State, had the intent of keeping Mexican-Americans almost semi-illiterate, and this we can go ahead and document anytime anybody wants to question.

So I say in defense of my brothers and sisters, let's not blame them for poverty or the system of education that is a consequence of their level of ability.

Language disability is a problem for many Mexican-Americans, and for poorly educated migrant workers in particular. Often Mexican-Americans and police officers simply and literally do not understand one another. If a Mexican-American does not comprehend a police officer's questions or commands, an ordinary contact can escalate into a more serious situation.

Police officials in rural areas or in States with large rural populations told Commission staff members that they recognized language differences as an important factor in the lack of understanding between Mexican-Americans and law enforcement officials. However, only six of the law enforcement agencies responding to the Commission's questionnaire required their officers to take a course in conversational Spanish. None of the agencies representing jurisdictions with less than 10,000 total population had such a course.

Commission staff members also found that Mexican-Americans whose English is poor are severely handicapped in the courtroom, often to an extent not understood or recognized by court officials. A lack of proficiency in English interferes with a criminal defendant's ability to plead intelligently, to advise his lawyer with respect to the facts, to understand fully the testimony of the witnesses against him, and otherwise to prepare adequately or assist in his own defense. It can lead to serious errors.

For example, a Commission investigator was told of a situation in a small Arizona community where a Mexican-American man who understood very little English was erroneously arrested and charged with sexually molesting a minor, a charge resulting from a misunderstanding by police officers of what a complaining witness had said.

At the time of his preliminary hearing the man thought he was being charged with drunkenness, and made no objection to the charge. No interpreter was present to explain the charge or to assist him. He was placed in jail to await trial since he could not afford bail.

It was only after a Spanish-speaking probation officer was able to

see him and converse with him in Spanish that the matter was cleared up and the case was dismissed.

In other rural communities Commission staff members learned that many Mexican Americans who did not understand English very well would plead to minor charges because they did not know what was happening when they appeared in court, and to plead guilty was the easiest thing to do under the circumstances.

Mexican-Americans who have difficulty speaking English also have serious problems in civil and administrative matters. In a small community in southwestern New Mexico, a Mexican-American man and his wife were declared unfit parents based on a complaint filed by the welfare department. As a result, three of their children were removed from their custody. However, the parents did not have the assistance of legal counsel and because they were not able to speak English fluently, it was impossible for them to present their case adequately.

After conviction, language disability can seriously hinder a Mexican-American defendant's opportunity to receive probation or parole and can create difficulties for him if he attains it. In many parts of the Southwest there are few, if any, Mexican-American or Spanish-speaking probation and parole officers.

In one community a Commission investigator learned that a local probation officer refused to allow Spanish to be spoken in his office and made people who had to converse in Spanish go out into the hall.

In parts of the Southwest some arrangements have been made for interpreters. However, Commission staff found that particularly in the lower level courts these arrangements often were less than adequate. In some cases regular court personnel or other untrained individuals were used as interpreters. In a few courts Spanish-speaking police officers were used to interpret for criminal defendants. While it is important not only that an interpreter be available when necessary, it is also important that the interpreter be a neutral figure who can gain the confidence of the defendant and the witnesses.

Let me say here we had to go into the Supreme Court of the United States several years ago and we had to sue the State of Texas to give us in the State equity under the jury system of Texas. Let me point out to you in the county of Nueces, a certain jury wheel is designated to receive all names of the poll tax holders. However, a precinct called Molina composed primarily of Mexican Americans never had a person in the jury wheel.

Thousands and thousands of the poor, Senator, who live in such areas like Molina were never placed in the jury wheel. Of course, the explanation is adequate "mechanically." The wheel was not large enough. This happened recently only about 4 or 5 years back.

JURY DISCRIMINATION

Under-representation of Mexican-Americans on grand and petit juries in rural areas of the Southwest is marked. A study of the grand juries in California for the period 1957-68 was done for the Commission by California Rural Legal Assistance, Inc. Of 20 California counties with the highest percentage of Spanish-surnamed population,

the study showed under-representation of Spanish-surnamed persons on the grand juries in every county, including those in the rural areas.

King County, with a Spanish-surnamed population of 13.4 percent, had 1.9 percent Spanish-surname representation on grand juries during the years studied. Merced County, with a Spanish-surnamed population of 13.6 percent, had 6.3 percent Spanish-surnamed representation. San Bernardino County, with a Spanish-surnamed population of 26.4 percent, had 8.8 percent representation on grand juries.

The effect of such under representation is important in that in California, as in some other States, the grand jury not only decides which persons shall be indicted and tried for crimes, but also has a general power to investigate and evaluate the administration of local government.

Exclusion of persons of a particular ethnic group or class from the grand jury thus may have important consequences even beyond impairing the fair and impartial administration of criminal justice.

Low representation of Mexican-Americans extends to trial juries as well. Several lawyers who have tried cases in South Texas testified at Commission hearings that they have never seen a Mexican-American on a jury in south Texas.

In Texas, especially in rural counties where the median years of schooling is low, language disability may be a factor in the lack of Spanish-surnamed representation. In the 20 southernmost Texas counties which are mainly rural, and have from 35 to 80 percent Spanish-surnamed populations, the median level of education of Spanish-surnamed persons was generally less than 5 years, according to the 1960 census.

But in each of these counties there were hundreds and, in some cases, thousands of other Spanish-surnamed persons who had completed from 5 to 7 or more grades of schooling, which presumably gave them enough knowledge of English to enable them to serve as jurors but didn't.

The Commission heard testimony to the effect that the disparities between the Spanish-surnamed population and the number who, in fact, served as jurors results in an excessive frequency of indicting Mexican-American criminal defendants and the rendering of excessively low verdicts in civil cases where Mexican-Americans are plaintiffs. It was also alleged that those few Mexican-Americans who are listed on jury panels are usually removed by preemptory challenges in both civil and criminal cases.

CONCLUSION

From the information I have given you this morning, I am sure that you will not be surprised to learn that in general the attitude of Mexican-Americans toward the institutions involved in the administration of justice—the police, the courts, and related agencies—is distrustful, fearful, and hostile. The agencies of justice are viewed as Anglo institutions in which Mexican-Americans have no stake and from which they do not expect fair treatment.

However, the extent to which attitudes of alienation, of viewing legal institutions as foreign, have been manifested in the course of

the Commission's research is only part of the picture. To Mexican-Americans, as to members of other minorities in this country, the failure of the administration of justice is simply the failure to guarantee them equal rights, not as members of a minority group, but as citizens of the United States.

Thank you for the opportunity to appear before this subcommittee. I shall be pleased to answer any question you may have.

In this edition of *The Corpus Christi Caller* is a list of south Texas Vietnam casualties and this list came out November 1, 1968. In it you have total casualties in south Texas of 278—Mexican-Americans, 182—and it gives us 66-percent casualties. These Mexican-American people send their sons and husbands to war. They are all American citizens and it has been said that the only way Mexican-Americans are going to get out of poverty is by collecting the insurance on their sons, brothers, and fathers who are killed in Vietnam. And I say this is a hell of a thing to have to say for Mexican-Americans. I am very saddened when this is said. We say it ourselves because we know we help bury those poor soldiers.

I wish to thank you, Senator Mondale, Senator Yarborough and members of the committee, members of the press, television, radio, ladies and gentlemen, for your time and if you have any questions to ask, I will be glad to try to answer them.

SENATOR MONDALE. Thank you, Dr. Garcia, for an excellent statement. Senator Yarborough?

SENATOR YARBOROUGH. Dr. Garcia, in your narration as to participation by Mexican-Americans in law enforcement agencies, there is one agency where, though few in numbers, Mexican-Americans do participate fully, and that is as deputy U.S. marshals, deputy assistant U.S. attorneys general in south Texas, and you have deputy marshals in Rio Grande Valley and have had for many years.

DR. GARCIA. That is correct.

SENATOR YARBOROUGH. The Federal Government recognizes the right of Mexican-Americans and particularly in the last few years to participate in law enforcement machinery in the country.

DR. GARCIA. That's right, Senator.

SENATOR YARBOROUGH. You have a Mexican-American Federal judge, the first in history, now appointed by President Kennedy at Brownsville, do you not?

DR. GARCIA. That is correct.

SENATOR YARBOROUGH. That is all. I wanted to point out, Mr. Chairman, that in the Federal sphere the American-American is recognized with citizenship rights.

SENATOR MONDALE. Dr. Garcia, would it be fair to say that the economies of the counties that you have listed on this chart are dependent upon the farmworker to a great extent, and that if it were not for Mexican-American farmworkers, the economies would be in desperate shape. Is that correct?

DR. GARCIA. I think they would. They are now dependent on the farmworkers there in that area, and the situation would be deplorable without them. The workers are poor of course, but with additional Federal grants, a lot of these poor counties actually, even today have updated their income. But it is the migrant workers who have con-

tributed a great amount to the development of whatever existed in those counties and certainly even in the old days during cotton development, cotton picking, and now the winter gardens, orchards, and railroad building, et cetera.

Senator MONDALE. But today those counties are primarily agricultural counties, are they not? They are producing citrus fruits and field vegetables, and they are very dependent upon these Mexican-American farmworkers to plant, cultivate, and harvest those crops, are they not?

Dr. GARCIA. That is correct.

Senator MONDALE. Then in light of the dependency of the agriculture community upon Mexican-American farmworkers, how do you explain their hostility and insensitivity to the Mexican Americans upon whom they depend for their livelihood?

Dr. GARCIA. Senator Mondale, this goes back to history. The hostility toward the Mexican American is a result of historical prejudice, that is all. We are hated as a result of the historical misrepresentation of the Texas revolution and the Mexican-American war. So therefore the hostility exists not only toward the migrant, it exists toward all Mexican Americans with few exceptions.

I can't quite understand it, of course. The proof is that in 1969 we still don't have a State minimum wage in Texas. We finally passed one that is coming into existence February 1970, and that would be \$1.25; for 1971, 1.40, and for 1972, \$1.60. But the whole truth is that Texas has failed to protect and help the migrant worker. So a lot of them have to migrate out of the State to make a better living.

Senator MONDALE. Why can't the migrants, sensing that these crops can't be planted or cultivated or harvested without them, simply refuse to work in the fields until they have gotten a more decent shake and the respect that has been accorded to other workers for years elsewhere in the country? Why don't they do that?

Dr. GARCIA. Because they don't allow them to organize. I remember I lived in Hidalgo County when I was a boy. Whenever you heard talk of union people coming over there, the rumors were: "They are agitators, Communists, and troublemakers." From the beginning, Texas was an agricultural State and the farmers didn't want us to receive any amount of education.

The whole system in Texas was geared up to this fact: "keep those Mexicans as agricultural workers." In fact, in 1940 a school board member told us personally when we were bringing a suit against the school board because at that time farmers were using children in agricultural work during the school hours. He said, "Who is going to pick our cotton?"—if the Mexican children go to school.

Also, Senator, school boards and county commissioners courts generally are run by agricultural farmers. They are hostile and they are callous toward the feelings and need of the Mexican American. According to their thinking and school teachings, we are supposed to be an inferior group of people.

I will leave this Houston Chronicle article for your study. This is in response to a study made at the University of Houston last year in December. Notice the horrible answers that were given to this question by 75 Anglo students: "What do you think when you hear the word

'Mexican'?" They went on to say they are lazy, good-for-nothing, low educational, illiterate, dirty, hundreds of kids, peons, switchblades, and so forth.

Those were not old people. This is the feeling by junior and senior Anglo students at the University of Houston. Not in 1936 but in 1968.

Senator MONDALE. Do we have that article for the record? We will include that in the record.

(The article referred to follows:)

[From the Houston Chronicle, Dec. 2, 1968, Houston, Tex.]

THE HYPHENATED AMERICANS.—CITIZENS FOR A CENTURY SQUABBLE OVER AN IMAGE

(By Carlos Conde)

More than a century after their official incorporation into American society, the Mexican-American still can't agree on a suitable image—nor can anyone else.

He has been called Mexican American, Latin-American, American of Mexican descent, Spanish-speaking American, Hispanic-American, white person of Spanish surname, Mejjicano, Tejano, Chicano, La Raza or just plain Mexican or Spanish.

His preference usually depends on the area in which he lives, his age, his education and his involvement in Mexican-American affairs.

The old-timers, people in the barrios and those along the Texas border seem comfortable with Latin-American.

The young professionals, the student element and most of the big-city dwellers like Mexican-American; the politicians frequently use emotional references like La Raza (The Clan) or Chicano (derivative of Mexijano). Many successful middle-class Mexican-Americans prefer American.

In New Mexico, they call themselves Spanish-Americans, laying claim to direct Spanish lineage, and cringe at any other allusions.

Other references like Spanish-speaking Americans are used mostly by non-ethnic persons who feel the Mexican-American is offended by a direct parenthesis.

"I'm a Mexican-American," Houston insurance salesman Martin Garcia said. "When someone calls me Latin-American I think he's trying hard to be polite and doesn't know me very well."

"I consider myself an American—period." Medal of Honor winner Macario Garcia of Houston said.

"I like to be called a Latin-American," said Houston hospital orderly Benny Martinez. "Mexican is too often used as a derogatory expression and creates misunderstandings."

"Forget labels, it's old stuff," said Bellaire barbershop owner Elias Garcia. "We're Americans."

LIKE IT IS

"Latin-American is innocuous: Spanish-speaking is patronizing but Mexican-American tells it like it is," lawyer Ben Canales of Houston said.

An example of the divergent views occurred in Houston when a group of Mexican-Americans formed a chamber of commerce.

Within three months they had split into two groups because they could not agree on what to call themselves. One group called itself the Mexican Chamber of Commerce; the other group became the Latin-American Chamber of Commerce.

This ethnic name game is part of what University of Texas Prof. George I. Sanchez once called "cultural indigestion."

To ward off discrimination and rejection without entirely deserting their ethnic ties, Mexican-Americans are constantly searching for the most compatible image.

"MENTAL IMPERIALISM"

This is traced to what one sociologist called the Anglo's "mental imperialism" over the Mexican-American; that is, the Anglo tried to repress the minority culture and language.

Many Mexican-Americans doggedly refused to yield to the Anglo culture, and

this fostered isolation and backwardness among the Mexican-Americans. Others restructured their ethnic background and assimilated into the Angloculture.

For everyone, however, the social pressures which he feels against his parent culture have made him extremely sensitive about his background.

Mexican-Americans show great indignation with people who can't differentiate between race and ethnic origin. For example: "Is he white? No, he's Mexican."

Policemen, school officials and job interviewers particularly draw their wrath when they list them as "Mexican" or "Latin" under the question of race.

They dislike the double standards used for Mexican-Americans and Latins from other nations.

Several years ago, a group of South Americans studying in a Texas university were turned away from a private recreation area. They complained to university officials who in turn protested to the proprietor.

"I'm sorry," he said inviting them back. "I thought they were Mexicans."

Almost everyone has felt confused, frustrated or insecure with the Anglo method of exulting the Mexican-American culture with one hand and deriding it with the other.

LOVES FOOD

"He loves our Mexican food but derides our dietary habits," youth worker Rick Campos of Houston said. "Spanish offensive if we speak it in front of him but his pidgin Spanish is supposedly charming when he uses it on us."

Some Mexican-Americans have gone to extremes to rub off what they consider an ethnic stigma.

Other Mexican-Americans have Anglicized their surnames and christened their children William instead of Guillermo or James instead of Santiago.

AFRAID OF OFFENSE

One Mexican-American moved into an all Anglo neighborhood and did not allow his parents or in-laws to visit him for several months because he was afraid of offending the neighbors.

The biggest dilemma is their native tongue. To break the Mexican-American's habit of speaking Spanish and to improve their English proficiency, schools have outlawed Spanish except in sanctioned classrooms.

Some Mexican-Americans have come to regard Spanish as inferior and the tongue of the poor and the ignorant.

Parents are reluctant to teach Spanish to their children, and many grow up learning only English without taking advantage of their bilingual abilities.

"I am teaching my son English first because I come from a Spanish-speaking background and I had a rough time," a parent said.

SPEAKING ENGLISH

"My children are growing up with English because I don't want them to have a Spanish accent," another said.

The language problem is not without comical overtones.

A Mexican-American policeman in Houston arrested another Mexican-American and had to call in a third one to translate because the policeman couldn't speak Spanish.

Prof. Sanchez faults the educational system for cheapening the Spanish language.

"We extol the virtues of foreign languages in the development and achievements of the educated; we decry their decline in public education," he said.

"We subsidize the teaching of foreign languages; yet in the Southwest, one of the world's greatest languages is suppressed. It doesn't make sense."

STEREOTYPED IMAGE

A tragic aspect of many Mexican-Americans' effort to upgrade themselves according to the Anglo norms has been the failure to improve significantly his stereotyped backward image.

This was pointedly underscored by 75 Anglo students in two sociology classes at the University of Houston.

A graduate student doing a research assignment asked: "What do you think of when you hear the word 'Mexican'?" Fifty-four wrote derogatory answers.

"A lower class worker, usually honest, with little opinion or backbone, no drive, just living from day to day," one student said.

"Working class, dirty T-shirt, big accent, low education, a few scars on face, a switchblade knife in pocket and driving a '54 Chevy," wrote a 21-year-old senior.

VIEW OF LATIN

"Illiterate, dirty, lazy people with hundreds of kids," a 19-year-old sophomore said.

"Conjures hard-working beer-bellied peons; I'd rather use the word 'Spaniard'," said a 24-year-old senior.

Sociology graduate student Tatcho Mindiola, who did the survey, said the report is inconclusive but it questions the accomplishments of assimilation and greater understanding.

"It wouldn't have been so significant if the replies had come from older, un-informed folks with their traditional biases, but these are from the younger element with minds supposedly trained to make an intelligent appraisal," Mindiola said.

Many Mexican-Americans who rise in anger at such unflattering descriptions are the younger generation who have inherited the problems but not experienced them as acutely as their elders did.

The march of time has mellowed the older Mexican-American. They remember the old days when being a Mexican-American was an irrepressible liability.

Senator MONDALE. Suppose the farmworker in one of these communities that is predominately Mexican-American said, "We are not making enough money to make a decent living. We have suffered these indignities, we have been sprayed with pesticides, we have no job security, none of the things which our fellow workers around the country have, and we just want an understanding that we are going to have conditions improved, and dignity, before we work."

Refusing to work is a standard technique used around the country and well accepted in labor-management relations. Would it not be fair to say that along the Mexican border, if farmworkers did strike, that within minutes their jobs would be taken by Mexicans brought across the border for the purpose of breaking such a strike? And that to this date there is such an influx of foreign labor that it is virtually impossible to apply any kinds of economic leverage on behalf of the farmworker?

Dr. GARCIA. First, the outside farmworkers would be brought. Second, no farmworkers would be allowed to organize. Third, if an outside labor organizer came in, they would bring out the cry outside agitator. Fourth, our farmworkers don't know who to go to for help.

Mexican-American farmworkers are not included in the National Labor Relations Act. I remember those ladies in the Colorado strike said that in Colorado also they were not allowed to organize as farmworkers. I think the farmworkers have nobody to go to for help and I think this should be a responsibility of the Federal Government to help and protect them.

Senator MONDALE. Turning to the question of political power, I think you indicated that it is very, very hard for Mexican-Americans to be elected to offices at the local level, even in those counties where there are heavy Mexican-American populations.

How do you explain that, even though they are such a high percentage of the population, the power structure is still so contemptuous?

Dr. GARCIA. I explain it simply because from the very beginning the power structure had ways and means of keeping the Mexican-Amer-

ican people from having full rights. One way was the buying of poll taxes. The poll tax costs \$1.75 which is a lot of money. Therefore to vote you had to buy a poll tax. The poor didn't have \$1.75.

Let me tell you that I think the greatest obstruction to the right of free registration are the tax assessors and collectors of every county. They are part of the county and State power structure. They are not about to make it easy for Mexican-Americans to register, because they don't want them to register.

Senator MONDALE. Is that where you have to register to vote with the tax assessor?

Dr. GARCIA. Yes; the tax assessor in Texas is responsible for issuing registration slips before January 31 every year. This is the deadline. You have to register at either his office or with his deputy or at a substation. But they shut down at 5 o'clock. He doesn't work on Saturday and Sunday. The poor work all week. It works alright. When you register a brother and sister, father and mother. However as a civic leader of organizations as veterans to save time and money I could round up hundreds of people and get them registered and send a hundred applications in one envelope and save postage. However, we are prohibited by law from mailing people registration slips for more than one family in the same envelope. In other words, they have to go to their tax office or substations to register in person, not by mail.

Tax assessors are against the belief that the "Democracy must also be applicable to Mexican-Americans." They think we should not be part of the American democratic mainstream.

Senator YARBOROUGH. I might help the chairman with a brief explanation of the law. When we finally knocked out the poll tax in Texas, the State legislature instituted this registration law without a poll tax. It is administered by the tax collector, assessor and collector of the county, because formerly the poll tax was collected by the tax collector, so it was kept in the same office because he had the books and records.

Under Texas law all registrations for people to vote next year must be completed by January 31, if they are going to vote in November. It is a very restrictive registration law. When the Federal court knocked out the poll tax, the legislature passed a registration law, as Dr. Garcia is pointing out, which makes it more difficult physically to get a registration certificate then it was to buy the poll tax in the past, providing you had \$1.75.

Senator MONDALE. Then, as I understand it, many of the times migrants are out of the State at the time they should be registering.

Senator YARBOROUGH. Now another indication of the way the State legislature has passed these laws to keep people from voting, under the old poll tax law when a person passed the age of 60, they were exempt from paying poll tax because of age, and if they lived in a city under 10,000 population, they were not required to have an exemption certificate in their pocket because the administration officials, the tax people holding the election all knew them personally.

Now, however, a person must have an annual registration certificate even though they live on a remote rural route 40 miles from the county seat. They must get this registration certificate at a little box where only 25 votes are cast and they must get one every year.

For a person over 60 years of age, it is much more difficult to qualify to vote and more expensive now and difficult to qualify to vote than it was back before the poll tax was knocked out. It is easier only in the sense of money required as a cost to register a person between ages of 21 and 60.

If a person is over 60, the laws are more difficult than ever and they are more difficult for a person under 60, except for the payment of \$1.75 a person. And so if you go out to carry on registration drives to register people to vote, it is far more difficult to register them now than it was in the old days.

Senator MONDALE. And registration is limited to daytime office hours. So these people who are working cannot go down to the tax office without losing a day's pay?

Dr. GARCIA. That's right. You have to register every year before January 31. I believe we are one of the few States that requires an annual registration. Since a lot of people are migrants this is a great amount of trouble to the elderly, the poor migrants to go and register every year during their working hours.

I think this is another subterfuge again to keep Mexican-Americans from enjoying all of the American democratic process.

Senator YARBOROUGH. Texas requires, Mr. Chairman, annual registrations for every voter who desires to vote in any type of election whatsoever, local school board election, mayoralty election, for city precinct election, county election, water district bond issue, State or National or any kind. Texas is the only State in the Union that requires annual registration for any kind of election in which you participate.

We have knocked out the poll tax, but they fastened an antivoting measure around our necks in the place of it.

Senator MONDALE. Dr. Garcia, haven't some Mexican-Americans been elected to county boards in these areas?

Dr. GARCIA. Yes, we have. For instance, last year, 1968, we have the first Mexican-American county commissioner elected out of our own county Nueces County. In around Corpus Christi, there has been some progress made on the election of city and county officials. In some of these areas some progress has been made in the election of the representatives to the State legislature.

And, of course, I was pointing this out in comparison with California, which has only one single Mexican-American legislator in California. I don't believe they have ever had a single Mexican-American elected statewide. I say yes, we are making some progress, slow as it may be. We could be making more progress if we could go to the Barrio and put on a strong registration drive.

Senator MONDALE. Are there some Mexican-Americans who might be elected to county or State boards who really have joined the establishment structure and are not helpful to the farmworker and to the migrant, even though they are Mexican-Americans?

Dr. GARCIA. Yes. I would say generally speaking when you have a representative legislator who is Mexican-American from an area which is agricultural, he is of no help to us. In fact, he usually becomes a hindrance to the movement of people like ourselves who want to get improvements for the migrants.

Senator YARBOROUGH. He joins the country club?

Dr. GARCIA. That is right.

Senator MONDALE. How do you explain it?

Dr. GARCIA. I don't know. It is human nature. I will say I am unable to explain it. After a little while they only seek to speak for themselves. I don't know whether it is for personal selfish interest or pressure from the establishment. I don't talk to such a person like this. Who negates free poor. In Spanish we call them "coyotes"-coyotes!

Senator YARBOROUGH. What does that mean?

Dr. GARCIA. "Coyotes 'sneaky animals.'"

Senator YARBOROUGH. What is Tio Tomás?

Dr. GARCIA. "Tio Tomás" is an Uncle Tom. We also have "chaquetos." That means "turncoats." "Coyote" is one who slinks around and he says, "Garcia so forth, you are my brother" and as you turn he stabs you in the back. A "chaquetero" means a "turncoat" who says: "You put me there, but I was never really for the Mexican American. I am a self-made Mexican-American," which is an unusual person anyway. But as a doctor, I understand "that no one is exactly self-made."

So we also have the "vendido" who is a complete sell out, a man who sold out to the almighty "dollar." So you see, Senator, we have very expressive terms in Spanish for those people who have abandoned the flock and sold out.

Senator YARBOROUGH. I will say that English is not nearly as expressive in the use of political terms as Spanish which can apply to coyotes, vendidos, chaquetos, and so forth.

Senator MONDALE. It is your testimony that in the field of just enforcement of the laws, there is discrimination.

Dr. GARCIA. Definitely.

Senator MONDALE. In political participation there is discrimination. In the opportunity to participate in the economy of our Nation and to receive fair protection or security under the laws, there is discrimination. About the only activity where they fully participate is the Selective Service System in the drafting of our youth.

Dr. GARCIA. As the result of "discrimination" in the draft boards, we have been fighting this discrimination as early as 1947. In 1947 I sent President Truman a telegram not to recognize the draft boards in the State of Texas because they were discriminating against Mexican Americans!

Every 3 years or so we have it out with the selective service boards in the State of Texas. He says he is going to increase membership of Mexican Americans. He may increase members in one board but he creates another board and gives us only one member. So we go through continuous lack of adequate representation. I will give you a copy of this newspaper article showing Mexican American Vietnam casualties in south Texas.

As soldiers we serve bravely. And that is not surprising, that is why I am so proud of being a Mexican American. Most of the casualties are marines. They are volunteers not draftees. I say without hesitation that the United States and Texas should be proud of those Mexican Americans. Because of their sacrifice they and their families deserve a better break in every way possible. They are not getting it in spite of their sacrifice.

I think the Federal Government must intervene and give these people who are good, loyal citizens, hard working, and suffering, all of the benefits of the greatness, richness, and abundance. And, also, equal protection under the law. We are victims of everything that is bad in our State: poverty, hunger, sickness, exploitation, et cetera.

Senator MONDALE. Is there evidence of discrimination by the selective service boards, the local boards, in drawing too many Mexican Americans?

Dr. GARCIA. Yes, I would say the end results speak for themselves. The fact is that we have an excessive number of Mexican-American casualties and also soldiers who serve. This is due to the lack of counsel for servicemen of Mexican ancestry. Few Mexican-American counselors or appeal agents are Spanish speaking.

Who counsels the Mexican American? Practically never a Mexican American. The draft board has a system of appeal. They never put Mexican Americans as appeal board members. The little people trust a few of us, not too many, unfortunately, but we do not serve as advisors or counselors in draft boards.

We are not advocating that they do not serve. This would be a fallacy and failure, because our Mexican Americans are fighting men. But we say they should be entitled to all of the due process of the law under the draft board system; we say that they have never been given the right to be informed of what is due process. In other words, they are taken, classified, sent for physical induction, and sent off to serve right away. No one tells them how to appeal.

Senator Mondale, when mothers have to go to certain local draft boards, to ask for advice for their son, they are abused and mistreated as if they were criminal mothers protecting a criminal son. This is the feeling toward Mexican Americans by draft boards in Texas. We need more representation in every stage of draft board, whether it be clerks or draft board members, counselors, appeal agents, et cetera. Our people should be treated more humanely and decently, not as criminals.

They are not.

Senator MONDALE. You indicated 66 percent of Mexican Americans on the casualty lists?

Dr. GARCIA. That is right, in south Texas, 66 percent.

Senator MONDALE. Would you say 66 percent of the draft board membership is Mexican American?

Dr. GARCIA. No, sir: not by a long way.

Senator MONDALE. What percent do you think you have?

Dr. GARCIA. I could submit the exact figures to you. Now I think it runs very, very low. We will submit it for the record.

(The material follows:)

SELECTIVE SERVICE SYSTEM,
Washington, D.C., February 20, 1968.

Mr. VICENTE T. XIMENES,
Chairman, Interagency Committee on Mexican American Affairs,
Washington, D.C.

DEAR Mr. XIMENES: This acknowledges your letter of February 9, 1968, with reference to Spanish-American representation on Selective Service System local boards.

The numbers referred to in my letter of January 26, 1968 relate to the number of Spanish-Americans serving as local board members in the states

mentioned. Reports from the five southwestern states having a large Spanish-American population show the following:

SPANISH-AMERICAN LOCAL BOARD MEMBERS

State	June 1967	January 1968
Arizona.....	6	8
California.....	12	13
Colorado.....	4	5
New Mexico.....	44	40
Texas.....	43	55
New York.....	11	19

Recently, Colonel Johnson furnished to the State Director of Selective Service for California statistics showing the countries having the heaviest concentration of Spanish-Americans. I have the assurance of the State Director that in any appointments to local boards in those counties, due consideration will be given to the predominate ethnic groups of the communities.

I trust that the foregoing is helpful, and if I can be of further assistance, please let me know.

Sincerely yours,

LEWIS B. HERSHEY,
Director.

DRAFT BOARD COMPOSITION, THE 5 SOUTHWESTERN STATES

States	Number of boards ¹	Total members	Mexican Americans	Percent	Mexican American percent of State population ²
Arizona.....	25	119	8	6.7	14.9
California.....	144	613	13	2.1	9.1
Colorado.....	67	214	5	2.3	9.0
New Mexico.....	31	135	40	29.6	28.3
Texas.....	155	703	55	7.8	14.8

¹ Number of boards based on report of the National Advisory Commission on Selective Service, table 5.1. Total number of members for each State provided by the Selective Service System. Total number of Mexican Americans for each State provided by the Selective Service System.

² Population figures based on 1960 census.

[From the Corpus Christi Caller-Times, Nov. 11, 1968]

IN MEMORIAM

The servicemen of South Texas who have given their lives in Vietnam in the defense of freedom follows:

Sgt. Faybert Ray Bradshaw, Corpus Christi	Pfc. Charles E. McGarvey, Corpus Christi
Lt. Cmdr. James T. Kearns, Corpus Christi	Sgt. Benito Perez, Corpus Christi
Chief WO Joe T. Welborn, Corpus Christi	Cpl. Raul F. Flores, Corpus Christi
Pfc. Ruben G. Chavez, Robstown	Sgt. Ernest B. Amador, Corpus Christi
Capt. Robert W. Wranosky, Flour Bluff	Pfc. Dwight King Satterwhite, Corpus Christi
Cpl. William A. Jennings III, Corpus Christi	Pfc. Alfredo Castanon, Corpus Christi
Pfc. Reynaldo Cavazos, Corpus Christi	SA Daniel Godinez, Corpus Christi
Sgt. John H. Eaglin, Corpus Christi	DC2 John D. Chuter, Corpus Christi
Cpl. Miguel Garcia, Jr., Corpus Christi	Pfc. Gary Till, Corpus Christi
Spec. 4 William R. Mindach, Corpus Christi	Ensign Darwin J. Thomas, Corpus Christi
EN2 Jerry Phillips, Corpus Christi	Sgt. Joe L. Ronje, Corpus Christi
	MRC Willy Scott Baker, Corpus Christi
	Sgt. Antonio Abel Solis, Corpus Christi

S. Sgt. Julius Greathouse, Jr., Corpus Christi
 Cpl. Alfredo J. Saenz, Corpus Christi
 Capt. Gary Hobbs, Corpus Christi
 Spec. 4 Pedro I. Garcia, Corpus Christi
 Spec. 4 Evaristo Vilano, Corpus Christi
 2nd. Lt. Maxim C. Parker, Corpus Christi
 Pfc. Frank Garza, Corpus Christi
 Cpl. David Keith Moneachi, Corpus Christi
 Pfc. Benito R. Gonzales, Bishop
 Pfc. Leonardo Leos, Corpus Christi
 Cpl. Ted Newcity, Corpus Christi
 Special Forces Ben Garza III, Corpus Christi
 Cpl. Desiderio C. Laurel, Jr., Corpus Christi
 Cpl. Jesus Yanez, Jr., Corpus Christi
 Cpl. Lonnie J. Ducote, Jr., Corpus Christi
 Spec. 4 Cary Paul Queen, Corpus Christi
 Cpl. Richard Guerrero, Jr., Corpus Christi
 Cpl. Juan A. Rodriguez, Corpus Christi
 Pfc. Sanders K. Stroud II, Corpus Christi
 Pfc. Robert Ochoa, Corpus Christi
 Spec. 4 Jose Ramos, Jr., Corpus Christi
 S. Sgt. William Poston, Corpus Christi
 2nd Lt. Robert I. Terry, III, Corpus Christi
 Cpl. Michael Eugene Vaught, Corpus Christi
 Spec. 4 Ignacio Alvarez, Corpus Christi
 Sgt. 1.c. Raul Ruben Lamas, Corpus Christi
 HM2 Alvin Lewis Raper, Corpus Christi
 Pfc. Faustino A. Trevino, Corpus Christi
 Spec. 4 Gary D. Fortner, Corpus Christi
 Sgt. Ronald E. Johns, Corpus Christi
 Spec. 4 Jose G. Cortez, Corpus Christi
 Cpl. Samuel Reyna, Corpus Christi
 Pfc. David Caballero, Corpus Christi
 Pfc. Adolfo M. Perez, Corpus Christi
 WO Jesse Leroy Samford, Corpus Christi
 Pfc. James L. Hammons, Corpus Christi
 Cpl. Tom M. Boyd, III, Corpus Christi
 Pfc. Paul G. Alaniz, Jr., Corpus Christi
 Spec. 4 Daniel E. Jurecko, Corpus Christi
 Pfc. Marcello C. Garza, Jr., Corpus Christi
 Pfc. George Guerra, Corpus Christi
 Cpl. Rolando Hernandez, Corpus Christi
 Cpl. Serveriano Amador, Corpus Christi
 Pfc. Donald Krussow, Corpus Christi
 Cpl. Sam Reyna, Corpus Christi
 MCpl Robert Mendez, Corpus Christi
 Spec. 4 Sidney M. Conolly, Jr., Corpus Christi
 Cpl. Roger Lee Stroud, Corpus Christi
 Sgt. Rudolfo Perez, Corpus Christi
 1st. Lt. John E. Russell, Corpus Christi
 Pfc. Loyde H. Simpson, Corpus Christi
 1st. Lt. James Neeley, Corpus Christi
 Sgt. Robert S. Roberson, Jr., Corpus Christi
 Lt. Douglas Cavin, Corpus Christi
 Pfc. Jose A. Hinojosa, Rio Grande City
 Pfc. Jimmy Michael Trollinger, Port Lavaca
 Sgt. Patricio Maldonado, Falfurrias
 Cpl. Margarito Garza, Bishop
 S. Sgt. Jesus Gonzalez, Robstown
 Capt. Heriberto Garcia, Laredo
 Capt. James C. Caston, Weslaco
 2nd. Lt. George Gutierrez, Jr., Harlingen
 Cpl. Jose Luis Caballero, Harlingen
 Pfc. Reynaldo Amador, Weslaco
 Spec. 4 Fortunato Luna, Alice
 Pfc. Richard G. Crossland, San Juan
 Cpl. Robert Perez, Weslaco
 Pfc. Adam M. Olvera, Alice
 Pfc. Jose Torres, Sinton
 Pfc. Marie Ybarra, Weslaco
 Pfc. Joel Rodriguez, Rio Grande City
 Spec. 4 Isidro Martinez, Mercedes
 Pfc. Feliberto Villa, Ingleside
 Spec. 4 James L. Slade, Jr., Cuero
 Pfc. Julian G. Cordero, Harlingen
 Sgt. Carlos S. Gonzalez, Mission
 S. Sgt. Kenneth Eugene Helms, Harlingen
 Sgt. Hermando S. Moya, Refugio
 Sgt. Vicente Q. Rodriguez, Pharr
 Bobby Swindell, McAllen-Edinburg
 Cpl. Robert Arnold Cockill, San Benito
 S. Sgt. Glen Dorse Lofton, Lyford
 Spec. 4 Roberto Rocha, Jr., Brownsville
 A.2.C. Larry E. Washburn, Donna
 Pfc. Antonio Morado, San Benito
 Pfc. Arthur J. Russell, Mercedes
 1st. Lt. J. J. Johnson, Falfurrias
 Cpl. Alberto Avalos, Brownsville
 Pfc. Elizarr E. Garza, Pila Blanca
 Cpl. Homero V. Tijerina, Edinburg
 Pfc. Jesse E. Herrera, Cuero
 Sgt. Roberta H. Butler, Jr., Brownsville
 S. Sgt. Wilberto C. Sanchez, San Benito
 Pfc. Pedro Martinez, Mercedes
 S. Sgt. Nortis Leon Haynes, Sinton
 Pvt. Sibano Morin, Kenedy
 Pfc. Francisco Moreno, Harlingen
 Sgt. Noe Magallan, Mission
 Sgt. E6 Sam Webster Dailey, Weslaco
 S. Sgt. Oscar Garcia, Falfurrias
 Spec. 4 Rodolfo G. Gonzales, Laredo
 Cpl. Rodolfo M. Gonzales, Harlingen
 M. Sgt. Walter Dietz, Laredo
 Lt. Col. James E. Webb, Odem
 Spec. 4 Adrian J. Ibrom, Yorktown
 Spec. 4 Frederico Perez, San Diego
 Spec. 4 Alejandro Garcia, Jr., Laredo
 Capt. Winston Peeples, Alice

- Spec. 4 Raymond F. Demory, Aransas Pass
Pfc. James A. Angermiller, Corpus Christi
Pfc. Arturo Rodriguez, McAllen
Sgt. Ruben L. Rocha, Agua Dulce
Sgt. Benito V. Alaniz, Brownsville
1st Sgt. C. A. Brown, Bloomington
Pfc. Francisco Garcia, Brownsville
Pfc. Jose R. Lozano, Weslaco
Pvt. Louis W. Terrell, Victoria
Spec. 4 Daniel F. Perez, Jr., Mathis
Spec. 4 Richard P. Cruz, Freer
Pfc. Jose B. Tijerina, McAllen
Pfc. Joe A. Saucedo, Raymondville
Pvt. Hijinio Oviedo, Raymondville
Sgt. Vincente D. Sandoval, Lozano
Pfc. Jose M. Flores, Harlingen
Cpl. Javier Becerra, Weslaco
Spec. 4 Amador L. Gonzalez, San Diego
S. Sgt. Javier Arturo Sanchez, Laredo
Cpl. Martin Cavazos, Sebastian
Cpl. Jose M. Gomez, Edinburg
Spec. 4 Raul Villa, Laredo
S. Sgt. Jose A. Rosas, Weslaco
Spec. 4 Robert L. Salinas, Pettus
Pfc. Rodolfo Andres Spenz, Mercedes
Pfc. Eduardo J. Gonzales, Sinton
Cpl. Joe Moya, Bloomington
Pfc. Jorge Sosa, Laredo
Pfc. Juan Jose Gonzalez, Laredo
Pfc. Gilberto Barrera, Alice
Sgt. Louie Don Briscoe, Jr., Aransas Pass
A.2.C. Dwight Ward, Portland
Spec. 4 Eugenio Rodriguez, Mercedes
Daniel G. Cavazos, Gregory
Pvt. Juan Valenzuela, Jr., McAllen
Sgt. Billy W. Platt, Port Lavaca
Cpl. Walter M. Lankford, Jr., Mission
Cpl. Guadalupe M. Alvarez, Donna
Capt. Edward L. Goucher, Laredo
Cpl. Thomas J. Pesek, Jourdanton
Pfc. Woodrow C. Cronkite, Weslaco
Sgt. Richard P. Ruiz, Victoria
Cpl. Don C. Thompson, Jr., Beeville
Pfc. Anthony Perez, Brownsville
Pfc. Arturo Garcia, Mercedes
1st Lt. Gregory C. Nuckles, Harlingen
2nd Lt. Edward E. Harson, Jr., Victoria
Spec. 4 Francis L. Maples, La Feria
Sgt. Guadalupe Martinez, Laredo
Sgt. Ignacio Torres, Jr., Laredo
Sgt. Ramon Hernandez Torres, Aransas Pass
S. Sgt. Henry R. Garcia, Rockport
Sgt. Homero Perez, Laredo
Spec. 4 Johnny Villarreal, Victoria
Spec. 4 Rodolfo Trevino, Alice
Pfc. Angel Vega, Woodsboro
Pfc. James Lee Scherer, Victoria
Cpl. Arnoldo L. Carrillo, Benavides
Pvt. Victor Espinoza, Jr., Edinburg
Lt. (j.g.) Warren W. Boles, Beeville
Spec. 4 Thomas H. Swinnea, Jr., Beeville
Maj. Robert E. Forshey, Laredo
Sgt. Alfredo Cantu Gonzales, Edinburg
Pvt. Alfredo R. Medina, Jr., Rockport
Cpl. Nolan L. Simmons, Edinburg
Sgt. Aurelio R. Ramon, Jr., Edroy
Pfc. John A. Smith, Aransas Pass
Sgt. Vitalio Vela, Jr., Falfurrias
Pfc. Wilton J. Sullinger, Jr., Aransas Pass
Spec. 4 Clarence Maas, Victoria
S. Sgt. Leonel Buentello, Gregory
Cpl. Ramiro Cardenas, McAllen
S. Sgt. Joe D. Dunn, Weslaco
Spec. 4 Ramon S. Hernandez, Brownsville
Pfc. Juan Flores, Jr., Laredo
Spec. 4 Harold R. Reeves, Mercedes
S. Sgt. Carlos V. Trevino, McAllen
Spec. 4 Jose S. Montemayor, Odem
Pvt. Domingo Rodriguez, Jr., Falfurrias
Pfc. Gary Lane Barnum, Rockport
Sgt. Abelardo Vera, Brownsville
Pfc. Carl E. Garza, Goliad County
Spec. 4 Rodolfo Villafranco, San Benito
Spec. 4 Extrumberto Solis, Elsa
Pfc. Rafael Martinez, Edinburg
Pfc. Pablo D. Sanchez, Taft
Sgt. Jose S. Garza, Laredo
Cpl. Reynaldo N. Orozco, Sinton
Cpl. Marvin L. Votaw, Beeville
Spec. 4 Atanacio Gomez, Jr., Brownsville
Maj. Albert G. Maroscher, McAllen
Sgt. Howard Chester Williams, Jr., Ingleside
Spec. 4 Casimiro Rodriguez, Jr., Victoria
Pfc. Thomas Gonzales, Beeville
Cpl. Donald Ray Allen, Arroyo City
Sgt. Domingo R. Gonzales, Sinton
Pfc. James P. Clarke, Premont
Lt. Jack Whetsel, Jr., McAllen
Cpl. Israel Perez, Brownsville
Pfc. Julian Soliz, Victoria
Spec. 4 Miguel A. L. Ruvalcava, Brownsville
S. Sgt. Oscar C. Gallegos, Alice
Spec. 5 Sigifredo Montalvo, Jr., San Benito
Pfc. Filiberto Chavez, Benavides
Pfc. Alberto Perez, San Benito
Pfc. Jesus Mejia, Brownsville
Sgt. Jesse C. Alba, Port Lavaca
WO Pedro J. Caudillo, Laredo
Pfc. Andres A. Gonzalez, Mercedes
Pfc. Paul G. Alaniz, Jr., Benavides
Spec. 4 Jorge Ramiro Soza, McAllen
Spec. 4 Reynaldo Torres, Jr., Laredo
Pfc. John V. Akin, Rockport
Cpl. Rito Silva, Alice

Spec. 4 Marcus Hinojosa, Hebbronville	Pfc. George E. Perdue, Victoria
WO Ross O. Barlow, San Benito	Capt. Wilburn C. Gideon, George West
Pfc. Guadalupe Lerma, Edcouch	Pfc. Elias Salazar, Jr., Harlingen
Pfc. Jesus R. Perez, Kingsville	Pfc. Gilberto Mendez Molina,
Pfc. Jesus Martinez, Mission	Harlingen
Cpl. John H. Baker, Beeville	2nd Lt. Harold C. Dailey II, McAllen
Cpl. Antonia Hernandez, San Benito	Spec. 4 Leonides Rodriguez, Woodsboro
Spec. 5 George Soliz, Kenedy	Cpl. Hector M. Gonzalez, Premont
Cpl. Rafael Avila, Skidmore	Pfc. Roberto Escobedo, Sinton
Spec. 4 Ramiro L. Salinas, Brownsville	Cpl. Santiago B. Adames, Jr., Victoria
Sgt. Willard O. Pack, Alice	S. Sgt. Antonio Milstead, Harlingen
Sgt. Antonio Vargis Garcia, Kingsville	M. Sgt. Antonio B. Jaime, Alice
Cpl. Lupe Monsebaiss, Mathis	Pfc. Antonio Garcia, Laredo
Spec. 4 Duane A. Johnson, Kerrville	Sgt. Eristeo Gutierrez, Jr., Mathis
S. Sgt. Augustus L. Williams,	Pfc. Adolfo M. Bejarano, Port Isabel
George West	Pfc. Wayne C. Elledge, Kingsville
Pfc. Arthur S. Zamora, Mathis	
Mexican American -----	182
Total -----	278
Percent Mexican American-----	66

This honor roll was compiled from resources available to The Caller-Times. We have attempted to include the name of every serviceman from South Texas killed in Vietnam. If any names has been omitted we regret that omission.

DUTY, HONOR, COUNTRY

"Duty, Honor, Country; those three hallowed words reverently dictate what you want to be, what you can be, and what you will be. They are your rallying point to build courage when courage seems to fail, to regain faith when there seems to be little cause for faith, to create hope when hope becomes forlorn.

The unbelievers will say they are but words, but a slogan, but a flamboyant phrase. Every pedant, every demagogue, every cynic, every hypocrite, every troublemaker, and I am sorry to say, some others of entirely different character, will try to downgrade them even to the extent of mockery and ridicule.

Their story is known to all of you. It is the story of the American men-at-arms. My estimate of him was formed on the battlefields many many years ago, and has never changed. I regard him now, as one of the world's noblest figures—not only as one of the finest military characters but also as one of the most stainless.

His name and fame are the birthright of every American citizen. In his youth and strength, his love and loyalty, he gave all that mortality can give. He needs no eulogy from me or from any other man. He has written his own history in the red on his enemy's breast.

But when I think of his patience under adversity, of his courage under fire, and his modesty in victory, I am filled with an emotion of admiration I cannot put into words. He belongs to history as furnishing one of the greatest examples of successful patriotism. He belongs to posterity as the instructor of future generations in the principles of liberty and freedom. He belongs to the present—to us—by his virtues and achievements.

In 20 campaigns, on a hundred battlefields, around a thousand campfires, I have witnessed the enduring fortitude, that patriotic self-abnegation, and that invincible determination which has carved his statue in the hearts of his people.

From one end of the world to the other, he has drained deep the chalice of courage . . . I do not know the dignity of their birth, but I do know the glory of their death. They died unquestioning, uncomplaining, with faith in their hearts, and on their lips the hope that we would go on to victory.

Always for them: duty, honor, country. Always their blood, and sweat and tears, as we saw the way and the light and the truth . . . on the other side of the globe, again the filth of dirty foxholes, the stench of ghostly trenches, the slime of dripping dugouts, those boiling suns of relentless heat, those torrential rains of devastating storms, the loneliness and utter desolation of jungle trails, the bitterness of long separation from those they loved and cherished, the deadly pestilence of tropical disease, the horror of stricken areas of war.

Their resolute and determined defense, their swift and sure attack, their in-

domitable purpose, . . . always victory, always through the bloody haze of their last reverberating shot, the vision of gaunt ghastly men, reverently following your password of duty, honor, country.

The soldier, above all other men, is required to practice the greatest act of religious training—sacrifice.

In battle and in the face of danger and death, he discloses those divine attributes which his maker gave when he created man in his own image.

No physical courage and no brute instinct can take the place of divine help, which alone can sustain him. However horrible the incidents of war may be, the soldier who is called upon to offer and give his life for his country is the noblest development of mankind . . . The long, gray line has never failed us. Were you to do so, a million ghosts in olive drab, in brown khaki, in blue and gray, would rise from their white crosses, thundering those magic words: duty, honor, country.”—Taken from General Douglas MacArthur’s farewell speech to the graduating cadets at West Point, May 12, 1962.

Dr. GARCIA. Let me give you my county. When I got out of World War II and organized this group of veterans “American GI Forum” our county who now has 52 percent Mexican Americans had no Mexican American board members. After our protest in 1946 then they placed one Mexican American on the draft board. Today in 1969 we have only two. The rest of the State is worse.

But this is still a continuous hassle and fight. And I would say that even today Mexican Americans in San Antonio have protested their underrepresentation in draft boards. The exception is the extreme south Texas areas, where are 80 percent of the people. All of the other parts of the State discriminate against us on proportionate representation on draft boards, counsellors, and so forth.

Senator MONDALE. Dr. Garcia, I am sorry we don’t have more time. We have two witnesses and the second one must be done by 11:30 because we have an executive session of the full Senate then.

Senator YARBOROUGH?

Senator YARBOROUGH. We have more Mexican Americans in Texas percentagewise than any other State in the Union. We have 37.9 percent of Mexican Americans in the Nation; 40 percent of the total are in California, but they have 20 million population. We have 11 million.

Dr. Garcia, let me ask you this question. We passed a law here in 1966, minimum wage law, that brought farm labor under minimum wage law for the first time in history. If a farmer had over seven employees for one quarter out of the year, he became subject to that law.

Under that minimum law now minimum wages have been up to \$1.30 an hour. That is very much higher than farm wages being paid in south Texas prior to passage of the minimum wage law; was it not?

Dr. GARCIA. Yes, sir.

Senator YARBOROUGH. What effect has it had on the workers?

Dr. GARCIA. Talking about minimum wage, I don’t think it is applying to too many Mexican farmworkers actually.

Senator YARBOROUGH. That farm over in Starr County, where they had the strike, had hundreds of employees. Some of those Starr County farms had hundreds of employees.

Dr. GARCIA. In that case, definitely it does apply. It helps a lot, but I think there is lack of information of who gets coverage under the law. Who points out to the farm workers that they have coverage under the Federal law? I think the law is a wonderful thing but people don’t know about it.

Senator YARBOROUGH. Are you saying the Labor Department is not enforcing the law there?

Dr. GARCIA. I would say definitely yes, they are not completely enforcing the law.

Senator YARBOROUGH. A lot of the farms are big farms and there are not too many little operators in irrigation; are there?

Dr. GARCIA. That's right. I constantly have to request the investigation from Wage and Hour Department in Corpus Christi for farm-workers, industrial workers, hospital workers, and so forth.

Senator YARBOROUGH. We have brought under the protection of that law for the first time in history workers in hotel, motel, cafeterias, laundries, restaurants, hospitals, nursing homes, and those facilities under the protection. Is that law enforced in Corpus Christi?

Corpus Christi was one of the areas we cited in passing the law. Whatever the size of the laundry, however small, you say that is not being enforced in Corpus Christi?

Dr. GARCIA. The law is there. Who knows about the law? The only way to find out is for somebody to complain to me. Let's see what happens, for instance, to the equal employment opportunity and legal defense fund.

You can't announce on the radio and newspaper or television that there is a legal defense fund free and accessible. They won't allow it. Officers of those agencies will come over here and discuss the law but no radio or TV publicity is allowed. So the same thing applies to the Federal laws. It is a wonderful instrument when it is enforced after somebody complains. But the enforcers the Department of Wage and Hour Division, and although good honorable men, are not properly staffed. They don't have enough people working to enforce this law effectively.

It is the person who complains who gets attention.

Senator YARBOROUGH. You are on the Civil Rights Commission. If you complain to the Wage and Hour Division, will they go and look into it?

Dr. GARCIA. Yes; they are very good people as far as checking out a complaint.

Senator MONDALE. We have had several complaints that Wage and Hour enforcement officers want employees themselves to file the complaint by name. But employees are often afraid to do so, because they think they will lose their jobs if they complain. So many times, since he won't file the complaint, the Wage and Hour officers say they can't go ahead with the complaint. Is that correct?

Dr. GARCIA. We are talking about two things here. The Equal Employment Opportunity Commission, even though they find an agency or plant or industry who does not properly comply, they cannot enforce their findings so the plaintiff himself has to file his case in a court. But I think under Federal wage and hour law, the Wage and Hour Division will investigate the case and usually they get results easier. However, they may themselves have to take their case to court to get results.

Senator YARBOROUGH. In the interest of time, Mr. Chairman, I will not ask further questions. We hope since Texas had no minimum wage law at that time, that bringing Texas under the protecting folds of

the minimum wage law of 1966, 9 million new workers was the broadest expansion of minimum wage law since the first one was passed in 1939.

We hope it will alleviate the situation in many conditions of employment, which included school cafeterias. Texas is one of those States whose attorney general filed a suit to say it was unconstitutional to pay minimum wages in State institutions and they went to court and filed a suit and lost it, so the law is applicable to all cafeterias and so forth.

Is that being enforced in the school cafeterias?

Dr. GARCIA. Yes, sir. And in the larger hospitals like the county hospital. The private nursing homes are fighting it.

Senator YARBOROUGH. Of course, little establishments are exempt such as laundries. A nursing home is small enough so that it won't apply.

Dr. GARCIA. We still have complaints coming in on that point and we submit it to the Wage and House Division.

Senator YARBOROUGH. Thank you.

Senator MONDALE. Thank you very much, Dr. Garcia, for your strong, eloquent, and authoritative contribution to our hearing record.

We will print your full statement, together with all the attachments at this point in the hearing record.

(The material referred to follows:)

PREPARED STATEMENT OF HON. HECTOR P. GARCIA, COMMISSIONER, U.S. COMMISSION
ON CIVIL RIGHTS

Mr. Chairman and members of the subcommittee: My name is Hector P. Garcia and I am a member of the U.S. Commission on Civil Rights. In my private capacity I am a physician in Corpus Christi, Texas. I appreciate the opportunity to speak to you about certain issues of concern to Mexican Americans in the rural areas and small towns of the Southwestern states.

Since the fall of 1967, the Commission has been studying the administration of justice in the Southwest particularly as it affects Mexican Americans. This study, now nearly completed, has examined the extent to which Mexican Americans are subject to discriminatory treatment by law enforcement officers, excluded from jury service, denied equal access to bail and adequate counsel, and employed in disproportionately low numbers in law enforcement agencies.

In the course of this study, Commission staff attorneys conducted investigations in the latter part of 1967 and in 1968, interviewing approximately 450 persons in Arizona, California, Colorado, New Mexico and Texas. Persons interviewed included private citizens, law enforcement officers, probation officers, prosecuting attorneys, judges, public defenders, attorneys in private practice, and leaders of Mexican American organizations. Two meetings of Commission State Advisory Committees were held in New Mexico and one in California in 1968 specifically to gather information for this study. Questionnaires were mailed to nearly 800 law enforcement agencies in the Southwestern states. Finally, the Commission held a hearing in San Antonio, Texas in December 1968 which dealt exclusively with the problems of Mexican Americans.

A report based on this study and these hearings will be released shortly. Although the Commission's research has not focused only on migrant farm workers, much of the information obtained relates to the rural areas in which may migrants live and work and a number of incidents and situations reported to the Commission staff specifically involve migrants.

I should like to summarize for you some of the problems encountered in our investigation:

I. POLICE HARASSMENT AND MISCONDUCT

The most serious issue encountered in the course of the Commission's study is harassment and abuse of Mexican Americans by law enforcement officers. Such

conduct ranges from unjustified arrests to insults, threats and, not infrequently, physical assaults. It has also been found that under existing procedures it is almost impossible for an individual to obtain redress or compensation for such injuries.

In general, in rural areas allegations of police misconduct were commonplace. For example, Mr. Natividad Fuentes, a longtime resident of Uvalde, Texas, told a Commission staff member that in January 1968, he and his wife were returning to their home from a visit with friends in a nearby town. Because of ice on the highway, Mr. Fuentes' car slid into a ditch just outside the city limits of Uvalde. Shortly thereafter two State Highway Patrolmen came to investigate.

Instead of assisting Mr. Fuentes, who is a small man—only 5 feet 3 inches tall, and weighing about 150 pounds—one of the Highway Patrolmen jerked him out of the car and hit him over the head with a blackjack, fracturing his skull. The FBI investigated this case, but no violation of Federal law was found by the Department of Justice. Although the Commission staff does not know the basis for this finding, it had some evidence concerning the inadequacy of the FBI investigation of this case. According to the victim, he was not interviewed. The Commission on Civil Rights transmitted its investigative report to the Department of Justice with a request that the case be looked into further. The Justice Department at the Commission's urging did take further action, including the filing of an information and later an attempted indictment against one of the highway patrolmen, but the Federal grand jury refused to indict and the Justice Department dropped the case. It is our understanding that as of this spring, Mr. Fuentes—who, incidentally, had no prior arrest record whatsoever—not even a traffic violation—still suffers from dizzy spells as a result of his injuries and has been unable to return to his full-time work for a construction contractor.

Testimony at the Commission's San Antonio hearing indicated that assaults on Mexican Americans by law enforcement officials in South Texas often go unpunished. According to one witness, in 1965 a Mexican American resident of a small town in South Texas, who got into an altercation with a sheriff, was beaten on the head with a pistol butt by the sheriff and a local justice of the peace. Neither local nor Federal action was taken against these officials. According to other witnesses, in June 1968, two women were assaulted by a highway patrolman in Pecos, Texas. The case against the highway patrolman was presented to the local grand jury but no indictment was issued.

The Commission staff heard several allegations that Mexican American and Anglo juveniles are not treated equally, that Mexican American youths who committed the same offense as Anglo youths were more severely punished. The former chief of police of Las Vegas, New Mexico, told the Commission's State Advisory Committee that during his period of service between 1962-1966, there were two troublemaking gangs, one Anglo and the other Mexican American, in his community. For the same misconduct, the local officials proposed to charge the Mexican American youths with criminal offenses and to punish the Anglo youths by suspending some of their school privileges. When the chief insisted that all the offenders be given the same treatment, the matter was dropped.

It is very difficult to obtain a remedy against police abuse in small towns. Procedures are quite informal and usually complaints are handled by the chief of police personally. In small departments he may be working too closely with his men to be able to consider complaints against them objectively. In some cases, Mexican Americans are afraid to complain about police abuse because of fear of retaliation. Soon after Mr. Fuentes, whose case was previously described, complained to the Federal Bureau of Investigation about the officers involved in his beating, new charges of speeding were filed against him by local law enforcement officers, in retaliation, he believes, for his action in filing a complaint.

The training and recruitment problems of small town police forces may also lead to violations of the rights of Mexican Americans. The superintendent of a sheriff's office in New Mexico stated that his office was understaffed and the men's pay "embarrassingly" low—\$325 per month for a deputy sheriff. Law enforcement agencies in the Southwest in cities under 10,000 responding to the Commission questionnaire indicated that 47 percent of the agencies did not have *any* formal training for officers joining their departments: The result is likely to be poorly trained law enforcement personnel. Moreover, the resources of such agencies are severely strained by the seasonal influx of migrants, perhaps resulting in hostility by officers towards migrant workers.

II. POLICE ATTITUDES TOWARD MIGRANTS

Rural police officers who were interviewed indicated that they looked on migrants as troublemakers. One police chief in a rural area referred to them as "tramps". In another area, the police used arrests to discourage migrants from coming into town from the local migrant camp.

Employees of the Colorado Migrant Council—an organization established to assist migrants—were also harassed. In 1967 an armed farmer threatened to kill a council employee who had tried to intercede for some migrant workers with whom the farmer was having a dispute. Although the employee complained to the local police, they refused to bring charges. In another incident, in Denver, four migrant laborers and an employee of the Migrant Council were arrested on a charge of assault, which they claimed was false. One of the men has trouble putting his hand down flat because of an injury. As a result of his disability, he was not able to roll his hand properly for fingerprinting. Commission investigators were told that a Denver police officer smashed him across the knuckles with his night stick in order to make him flatten his hand out for fingerprinting. In addition, the representative of the Colorado Migrant Council who was arrested with the four laborers was questioned by Denver police officers who reportedly asked him, "What are you doing with these Mexicans?"

In urban areas, Mexican Americans complained of dragnet stop-and-frisk practices by law enforcement officers—where members of a group are indiscriminately stopped and searched, instead of stopping only those against whom a reasonable suspicion of criminal violation exists. The rural equivalent of this complaint concerns the practice of law enforcement officials of enforcing immigration laws in border areas by stopping Mexican Americans indiscriminately as "wetbacks" and asking them to show their papers. Several instances are reported in which such persons were arrested and jailed, then released several hours later.

On the other hand, migrants found it difficult to obtain police protection when they needed it. Commission staff heard allegations that local law enforcement officers would not conduct adequate investigations into crimes where migrant workers were the victims, and that law enforcement is generally lax around migrant labor camps. The situation during the summer of 1967 at the labor camp near Fort Lupton, Colorado is a good example. The town line has been drawn so that the labor camp is just outside the city limits and local police services are not available to the residents of the camp. If the need for police protection arises they have to call the Weld County Sheriff's Department in Greeley, Colorado, over 25 miles away. Consequently, law enforcement protection in the camp is nonexistent.

III. INTERFERENCE WITH FARMWORKER ORGANIZATIONAL EFFORTS

The Commission also received information concerning difficulties of Mexican American farm workers in labor union organization and union-management conflicts. This Subcommittee is familiar with the events of 1967 in Starr County, Texas, where the Texas Rangers were sent in upon the request of local officials when the United Farm Workers Organizing Committee attempted to organize the farm workers in that area and to strike against some growers. In May, 1967 the Texas State Advisory Committee to the United States Commission on Civil Rights held meetings and after hearing testimony found that the Texas Rangers and local law enforcement officials had harassed members of the Farm Workers Committee through physical and verbal abuse and the holding of union organizers in jail for many hours before they were released on bond. The Committee also found that the Texas Rangers had encouraged farm workers to cross picket lines, and that the harassment and intimidation by Rangers of members, organizers, and sympathizers of the Farm Workers Committee gave the appearance that the Rangers and local law enforcement officials were in sympathy with the growers and packers rather than being impartial guardians of the law. Testimony from several witnesses at the Commission's hearing in San Antonio supported the findings of the Advisory Committee. State law enforcement officials denied the allegations and maintained that they had acted impartially throughout the events in Starr County.

Concerning an eight-month strike by Mexican American farm workers at a floral farm in Colorado, in February of this year I, personally, interviewed several of the women involved in the strike and received complaints from them concerning the conduct of local law enforcement officials. These women alleged

that complaints from the struck farmer and his employees against the strikers and their sympathizers were welcomed by local law enforcement officials, while complaints by the striking workers were ignored or were improperly handled and poorly investigated. In addition, local ranchers were deputized to help local law enforcement officials handle the strike, and it was alleged that excessive force was used against those strikers who did engage in misconduct. In February 1969 after a local court enjoined pickets from blocking the main gateway to the struck farm, five of the Mexican American women leading the strike wrapped themselves in a 25 foot chain and fastened it across the main entrance. An employee of the farm cut the chain from the gate, but the women remained snarled in it. Then without a word of warning, a sheriff's deputy approached the women from behind and spread a layer of tear gas over them. An early morning fog caused the gas to hang in the air around them, and they fell to the ground unable to escape because of the weight of the chain and their inability to coordinate their movements. Other picketers, who were standing nearby, dragged the helpless women out of the cloud of gas.

Although the Commission staff did not specifically investigate the situation in Delano, California, it has received information alleging that the United Farm Workers Organizing Committee has received very little cooperation or protection from local law enforcement officials when strikers and their supporters were harassed by local grape growers and their employees.

A basic thread runs through all these situations—State and local law enforcement officials have acted in a manner designed to aid the farmers and growers and often have interfered with legitimate attempts by union officials and others to organize and strike.

IV. COUNSEL AND BAIL

Since most migrant workers and their families have small incomes, it is particularly difficult for them to obtain private counsel in either civil or criminal cases. Nor can they afford bail and often must remain in jail until they are tried, thus jeopardizing their defense and seriously interfering with their family life and employment.

In serious criminal cases counsel must be appointed for indigent defendants. However, the Commission staff heard many complaints that attorneys appointed for indigent Mexican American defendants were inexperienced or unfriendly toward their clients and often tried as a matter of course to bargain for a light sentence in return for a plea of guilty rather than adequately and fully represent them.

In some areas there are few if any attorneys available at all. In primarily rural Sandoval County, north of Albuquerque, New Mexico, there was only one lawyer in the entire county, the Director of the Legal Services Program; she was not able to represent indigents in criminal matters because of the prohibition contained in the 1967 amendments to the Economic Opportunity Act.

In many rural areas Commission investigators learned that local attorneys were reluctant to handle cases for Mexican Americans because they did not pay well enough, or because they were "controversial" and might offend an attorney's other clients. At the same time there are many areas in the Southwest with large concentrations of Mexican Americans that do not have federally funded legal services programs to handle civil matters for indigents. There are very few Mexican American attorneys practicing law in the Southwest—only 2 percent—and the majority of them are in the large urban areas rather than in rural communities.

The Commission also heard complaints that the system of bail was used improperly against Mexican Americans. There was testimony that excessive bail and unnecessary bail requirements were used by local law enforcement officials to harass union organizers and their supporters in Starr County in 1967. Commission staff learned that in some rural communities officials purposely confused Mexican American defendants to make them think that the hearing to set bail was the trial, so defendants would not appear later for trial, thus forfeiting bail and automatically establishing a criminal record. In one community in northern Colorado migrant workers were arrested and charged with drunkenness. They then were released on \$75 bail, but trial was set for over two months later, long after they would have left the community to go to work elsewhere. Thus, they were forced to forfeit their bail if they moved on to farm work elsewhere.

In the San Luis Valley in southern Colorado, Commission staff members investigated allegations that the misuse of bail and fines by local authorities had resulted in a situation resembling peonage or involuntary servitude. They were told that during the harvest season local farmers went to the jails in several of the small towns on Monday mornings and inquired about the number of Mexican American farm workers arrested over the weekend. The farmers selected the best workers and paid their fines or posted their bail. Then the men were released in the custody of the farmer and required to repay the money by working for the farmer. In one community the men were told by the police magistrate that if they did not remain on the farm and work off the amount they owed to the farmer they would be returned to jail. The same magistrate sometimes would give the farmer a "discount": if, for example, the fine or bail were set at \$40, he would require the farmer to pay only \$25, but would tell the worker that he owed the farmer \$40 worth of labor. Interviews by Commission members with officials in several communities established that the practice of local farmers paying fines or posting bail for Mexican American workers was common.

V. LANGUAGE

Language disability is a problem for many Mexican Americans, and for poorly educated migrant workers in particular. Often Mexican Americans and police officers simply and literally do not understand one another. If a Mexican American does not comprehend a police officer's questions or commands, an ordinary contact can escalate into a more serious situation. Police officials in rural areas or in states with large rural populations told Commission staff members that they recognized language differences as an important factor in the lack of understanding between Mexican Americans and law enforcement officials. However, only six of the law enforcement agencies responding to the Commission's questionnaire required their officers to take a course in conversational Spanish. None of the agencies representing jurisdictions with less than 10,000 total population had such a course.

Commission staff members also found that Mexican Americans whose English is poor are severely handicapped in the courtroom, often to an extent not understood or recognized by court officials. A lack of proficiency in English interferes with a criminal defendant's ability to plead intelligently, to advise his lawyer with respect to the facts, to understand fully the testimony of the witnesses against him, and otherwise to prepare adequately or assist in his own defense. It can lead to serious errors.

For example, a Commission investigator was told of a situation in a small Arizona community where a Mexican American man who understood very little English was erroneously arrested and charged with sexually molesting a minor, a charge resulting from a misunderstanding by police officers of what a complaining witness had said. At the time of his preliminary hearing the man thought he was being charged with drunkenness, and made no objection to the charge. No interpreter was present to explain the charge or to assist him. He was placed in jail to await trial since he could not afford bail. It was only after a Spanish-speaking probation officer was able to see him and converse with him in Spanish that the matter was cleared up and the case was dismissed.

In other rural communities Commission staff members learned that many Mexican Americans who did not understand English well would plead guilty to minor charges because they did not know what was happening when they appeared in court, and to plead guilty was the easiest thing to do under the circumstances.

Mexican Americans who have difficulty speaking English also have serious problems in civil and administrative matters. In a small community in southwestern New Mexico a Mexican American man and his wife were declared unfit parents based on a complaint filed by the welfare department. As a result, three of their children were removed from their custody. However, the parents did not have the assistance of legal counsel and because they were not able to speak English fluently it was impossible for them to present their case adequately.

After conviction, language disability can seriously hinder a Mexican American defendant's opportunity to receive probation or parole and can create difficulties for him if he attains it. In many parts of the Southwest there are few if any Mexican American or Spanish-speaking probation and parole officers. In one community a Commission investigator learned that a local probation officer refused to allow Spanish to be spoken in his office and made people who had to converse in Spanish go out into the hall.

In parts of the Southwest some arrangements have been made for interpreters. However, Commission staff found that particularly in the lower level courts these arrangements often were less than adequate. In some cases regular court personnel or other untrained individuals were used as interpreters. In a few courts Spanish-speaking police officers were used to interpret for criminal defendants. While it is important not only that an interpreter be available when necessary, it is also important that the interpreter be a neutral figure who can gain the confidence of the defendant and the witnesses.

VI. JURY DISCRIMINATION

Underrepresentation of Mexican Americans on grand and petit juries in rural areas of the Southwest is marked. A study of the grand juries in California for the period 1957-1968 was done for the Commission by California Rural Legal Assistance, Inc. Of 20 California counties with the highest percentage of Spanish-surnamed population, the study showed underrepresentation of Spanish-surnamed persons on the grand juries in every county, including those in the rural areas. King county, with a Spanish-surnamed population of 13.4%, had 1.9% Spanish-surnamed representation on grand juries during the years studied. Merced county, with a Spanish-surnamed population of 13.6% had 6.3% Spanish-surnamed representation. San Bernardino county with a Spanish-surnamed population of 26.4% had 8.8% representation on grand juries.

The effect of such underrepresentation is important in that in California, as in some other states, the grand jury not only decides which persons shall be indicted and tried for crimes, but also has a general power to investigate and evaluate the administration of local government. Exclusion of persons of a particular ethnic group or class from the grand jury thus may have important consequences even beyond impairing the fair and impartial administration of criminal justice. Low representation of Mexican Americans extends to trial juries as well. Several lawyers who have tried cases in South Texas testified at Commission hearings that they have never seen a Mexican American on a jury in South Texas. In Texas, especially in rural counties where the median years of schooling is low, language disability may be a factor in the lack of Spanish-surnamed representation. In the 20 southernmost Texas counties which are mainly rural, and have from 35 to 80 percent Spanish-surnamed populations, the median level of education of Spanish-surnamed persons was generally less than 5 years, according to the 1960 Census. But in each of these counties there were hundreds and, in some cases, thousands of other Spanish-surnamed persons who had completed from 5 to 7 or more grades of schooling, which presumably gave them enough knowledge of English to enable them to serve as jurors.

The Commission heard testimony to the effect that the disparities between the Spanish-surnamed population and the number who in fact served as jurors results in an excessive frequency of indicting Mexican American criminal defendants and the rendering of excessively low verdicts in civil cases where Mexican Americans are plaintiffs. It was also alleged that those few Mexican Americans who are listed on jury panels are usually removed by peremptory challenges on both civil and criminal cases.

VII. CONCLUSION

From the information I have given you this morning I am sure that you will not be surprised to learn that in general, the attitude of Mexican Americans towards the institutions involved in the administration of justice—the police, the courts and related agencies—is distrustful, fearful and hostile. The agencies of justice are viewed as Anglo institutions in which Mexican Americans have no stake and from which they do not expect fair treatment. However, the extent to which attitudes of alienation, of viewing legal institutions as "foreign", have been manifested in the course of the Commission's research is only part of the picture. To Mexican Americans, as to members of other minorities in this country, the failure of the administration of justice is simply the failure to guarantee them equal rights, not as members of a minority group, but as citizens of the United States.

Thank you for the opportunity to appear before this subcommittee. I shall be pleased to answer any questions you may have.

U.S. COMMISSION ON CIVIL RIGHTS
Washington, D.C., August 14, 1969.

Mr. BOREN CHERTKOV,
Counsel of Subcommittee on Migratory Labor, Old Senate Office Building, Washington, D.C.

DEAR MR. CHERTKOV: I am forwarding the enclosed materials on behalf of Dr. Garcia for such use as you may deem appropriate.

Sincerely yours,

LAWRENCE B. GLICK,
Acting General Counsel.

AMERICAN GI FORUM OF TEXAS, DISTRICT I

RESOLUTION

Whereas recently, Hidalgo County Judge, Milton D. Richardson, while holding Commissioners' Court meeting was approached by a number of our youthful Mexican-American brothers who were seeking better social services to our poor people, and,

Whereas one of them, merely because he failed to state his name when asked to do so by the Judge, and because he displayed arrogance and impatience, was forthwith sent to jail on orders of County Judge Richardson, and,

Whereas we observe that other courts courts in Hidalgo County are kind enough to properly and adequately warn even those older than seventeen (17) years appearing before them of the possibility of a finding of contempt and jail or give ample opportunity for one to purge himself of conduct thought to be contemptuous, we note that County Judge Richardson failed to show such kindness; we therefore,

Resolve, First, that we go on record as strongly disapproving of the above-described ill-tempered action of Hidalgo County Judge Milton D. Richardson; Second, that we feel he so acted because he does not have enough regard for the deplorable social and economic condition of our poor Mexican-American brothers, particularly when brought to his attention by our zealous Mexican-American youth of this day, who, while having observed the awful plight of their ancestors and visited upon many of their families even today, speak out with frustration and impatience; Third, that we must all be cognizant of the fact that while our Mexican-American youth of today has been more outspoken than in the past it is undisputable that they have not taken to violence, and that so long as they do not, and still seek social justice, all conscientious citizens ought to support them, and, Fourth and finally, we resolve that we need a County Judge more understanding of the problems of our poor Mexican-American families, who compose the major part of the population of Hidalgo County, a judge who should be more temperate in the discharge of his powers while holding Commissioners' Court, and who must remain aware that our youthful brothers in their zeal for attaining social justice are not alone.

Adopted this 19th day of June, A.D., 1969 at Edinburg, Hidalgo County, Texas.

[From the San Antonio Express News, July 27, 1969]

ADULT ILLITERACY LEADING REASON FOR SAN ANTONIO POVERTY

(By Deborah Weser)

San Antonio sports a blue ribbon both it, and Texas, can well do without. And the only way it can lose that top rating is by heavy investment in human resources, adult education among them.

A West Virginia University researcher says San Antonio leads 36 major cities in its incidence of poverty. And the list he compiled includes such giants as Chicago, Los Angeles, Detroit and New York too.

More than that, the researcher claims he has devised a new formula that estimates accurately the number of poor in any urban area. And produces a figure only 10 percent off the actual nose count.

Dr. Woo Sik Kee, of WVA's Regional Research Institute in Morgantown, W.Va., lays the blame for poverty on poor education. He says education, or lack of it, is one of four primary factors that combine to create high poverty levels in any urban area.

San Antonio does have an adult basic education program. But it "is only scratching the surface," according to its director, Robert A. Avina. Avina works for the Bexar County Board of Education. And the board is the coordinating agency for the 10-district adult education program, among other things.

Avina counts 128,000 functionally illiterate adults in Bexar County. Functional illiterates are adults who have not gone beyond eighth grade in formal schooling.

Supported almost entirely by federal funds, the program here also depends heavily on volunteers, generally recruited through the San Antonio Literacy Council. Unfortunately, the federal funds are earmarked only for eight grades of instruction, no more, says Avina.

Dr. Kee's paper claims that poverty can be counted by combining statistical returns from four factors. These are education level, labor force participation rate, migration from suburbs to central city and job discrimination against non-white workers.

Labor force participation is really the ratio of those who are working to the number of people who could work but are not.

"Sixty-three percent of variation in the poverty incidence is explained by poorly educated adults. This may not be surprising, but it does indicate that the expansion and improvement of adult education and training programs would greatly reduce the number of people living in poverty," the research scientist declared.

His paper appeared in *The Journal of Human Resources*, a national professional journal in the social sciences.

Dr. Kee's contribution to knowledge is a formula that gives a quick count of the number of poor in a given urban area. And comes close to the true figure without actually going out and physically counting noses.

The research scientist insists "the greatest reduction in urban poverty would be possible by increasing the level of adult education, particularly at the lower end of the education spectrum."

"These results confirm the general contention that the expansion and improvement of investments in human resources is the most effective way of reducing poverty in urban America," he adds. Education gets top priority. But Kee also underscores the importance of economic activity. What he did indicate was that a city whose industry is expanding is going to have jobs for most of its people. But by "industry" he nowhere limits himself to factory or plant production. He means business and services too.

In a pertinent footnote, Cong. Henry B. Gonzalez recently said San Antonio is low in economic growth.

The 20th District Congressman reports San Antonio lagging behind Dallas, Fort Worth and Houston, in growth industries. And he lists only two here in the Alamo City in that category: Church's Fried Chicken, a service industry; and Alamo Iron Works, a more traditional enterprise.

Without education, most adults have no skills to sell on today's labor market. That's what Kee's report indicates.

One adult gets a year's basic education for about \$58 under the system operating here, according to Avina. The federal Office of Education, part of the Department of Health, Education and Welfare, offers the funds directly to the Texas Education Agency. TEA, in turn, allocates money to each of the districts involved in adult education.

Here, only Judson Independent School District and the three military base districts are not participating in the program.

Some 3,200 students were enrolled in the program at the end of the 1968-69 school year. But throughout the year, some 6,150 had actually participated in classroom work, Avina says.

"But that's only two to three percent of those who need it," he added.

Some 700 students went beyond eighth grade in their studies. But only 200 qualified for General Educational Development certificates. The GED is more popularly known as high-school equivalency certificate and represents a concentrated study of English and mathematics.

Eighteen of the 54 classes taught twice weekly here are led by Literacy Council volunteers. It is those volunteer-led classes that deal with subject matter beyond eighth grade, Avina noted.

"Technically, this is as far as we can go. Up to now, we have not had any funds to help us go beyond the eighth grade level," Avina declared.

"I think," he added, "the federal government feels if we can get them up to eighth-grade level, they can improve their employment chances."

"But we feel we are probably dropping them if we let them go at the eighth grade level. We feel we should be able to continue at least into some kind of vocational education.

"Once the people are motivated to become educated and then don't go on beyond the eighth grade level, they get discouraged and drop out," he insisted.

Avina noted that both the Concentrated Employment Program (CEP) and the proposed migrant program here both have adult basic education components. CEP directs its efforts to job-preparation and job-orientation for adults. The migrant program, of course, is designed to serve the needs of migrant farm workers who come into Bexar County during part of the year.

By the end of 1968-69, Avina said, the adult basic education program had attracted \$153,000 in federal funds here, part of it tied to several special projects. One of them deals with the use of television in education for adults; the other is an adult learning center. And it is now being moved from Edgewood Junior High School where it began to St. Agnes School.

Through the good offices of the Community Welfare Council and TEA, the project is also applying for a federal mini-grant of \$10,000. The idea is to use it for a mobile educational unit operating directly in the poverty pockets of the county.

"We're just scratching the surface," Avina repeated unhappily. "We need to amplify our effort more. Especially to the hard core."

Dr. Kee's study warns that a city or county may not be able to provide the heavy investment this kind of education service requires and proposes that both state and national government take over much of the burden.

He also says the present direction of the war on poverty is effective but there can be no cut in spending if poverty is to be wiped out of urban America.

Kee also insists that some direct subsidy programs, like the guaranteed annual income or a negative income tax, will have to be tied in with intensive "human investment programs" to make the poverty war effort work.

[From the Corpus Christi Caller-Times, July 23, 1969]

PROBLEM OF TEXAS HUNGER SUBSTANTIAL, SAYS REPORT

(By Anne Dodson)

Despite official denials, the problem of hunger in Texas is substantial, the U.S. Commission on Civil Rights states in a staff study released today.

The commission examined conditions in 18 Texas counties in December, 1968, and concluded that "in Texas, as elsewhere, the national effort to feed the hungry is failing."

A laissez-faire attitude on the part of state and federal agencies was said to be contributing to the failure of the two federal food assistance programs (surplus food commodities and food stamps) to reach the majority of poor families.

The counties included in the study were Bexar, Cameron, Dimmit, Frio, Duval, Hidalgo, Jeff Davis, Jim Hogg, Jim Wells, Kenedy, La Salle, Maverick, Presidio, Starr, Webb, Willacy, Zapata and Zavala.

In 1966, it was estimated that 15 per cent of American families were living in poverty. For Texas, the figure was 26 per cent.

The 1960 census found more than half of Texas' Mexican-American families with incomes below the poverty level (\$3,000). At that time, all but two of the 18 counties studied by the commission had populations in which the Mexican-Americans formed the majority. (The exceptions were Presidio and Bexar.) Of the nearly 1½ million people living in these counties, more than 640,000 had Spanish surnames.

Despite this widespread poverty, only 149 of the 254 counties in Texas had either commodity food distribution or food stamps, the report states. Nearly nine out of every 10 Texas families living in poverty receive no assistance from federal food programs.

NO PRESSURE EXTENDED

No pressure was put on counties with high poverty rates which do not use these programs, the report states. (Since 1967, the U.S. Department of Agriculture has been authorized to open a commodities distribution center if the county government refuses to.)

Burton G. Hackney, state commissioner of public welfare in Texas, told the House Committee on Education and Labor in May, 1968, that inquiries are sent to these counties at intervals.

Replies from 40 per cent stated that no need for a program existed; the remaining 60 per cent did not reply.

Hackney said that "hunger and starvation do not exist" among welfare recipients in Texas. He also told the committee that poor families who are not on the welfare rolls were also not in dire need.

He was able, however, to cite no statistics to support this statement. Asked by the House committee chairman, Carl D. Perkins, to survey the problem of hunger in Texas, Hackney's study then showed that there were 67,904 families, comprising 348,064 individuals, in the state who were in the "chronic hunger and starving" category.

This estimate was considered to be low since the study was limited only to chronic hunger, and did not include "day-to-day hunger and malnutrition."

MALNUTRITION PRESENT

The presence of malnutrition in Texas also was indicated in the preliminary findings of the National Nutritional Survey, conducted by the U.S. Public Health Service. Based on biochemical and clinical evidence, the survey, found "malnutrition in our random sample population of the lower socio-economic groups in Texas."

The virtual inevitability of malnutrition and hunger is seen in the disparity between welfare figures—between what the state said a family needs and what the state gave such a family.

In May, 1968, the Texas Department of Welfare set the minimum amount for a family of 4 under the Aid to Families with Dependent Children program for a decent standard of living at \$164 a month (with \$89.50 of this allotted for food).

However, in the same month, the state provided such an AFDC family with a cash payment, not of \$164, but \$114. (Later AFDC payments for a family of four were reduced to \$102.)

Even when federal food programs are used by counties in Texas, only a percentage of poor families receive food, the welfare report states.

Of the 18 counties studied, 14 participate in the federal surplus foods distribution program. Yet the eligibility rules keep more than 80 per cent of the poor families from receiving surplus foods. In Hidalgo, which has the largest number of poor families of any of the counties studied, only 5 per cent were eligible for commodities.

In the three counties with a food stamp program, there are 50,000 poor families. Yet only 3,800, fewer than 1 in 10, get food stamps, the report states.

The problems cited in the food distribution program include: Restrictions in commodities; goals of the program; lack of state support; eligibility limits; infrequent distribution; and county control.

PRICE STABILITY CITED

The report stressed that the prime function of the surplus foods program is not to feed the needy but to stabilize farm prices. If no agricultural products are in surplus, then no food is distributed, regardless of the needs of the poverty-stricken.

The program is funded by an act setting aside 30 per cent of the annual customs receipts to purchase these supplies. Since 1958, this has amounted to \$4 billion. Yet more than \$1 billion of this amount was returned unused to the treasury, the report states.

Foods distributed must not only be in surplus but must not require refrigeration. In 1968 the list included dried beans, bulgur, butter or margarine, cheese, corn grits, flour, chopped meat, nonfat dried milk, peanut butter, dried prunes, raisins, shortening or lard, rolled wheat or oats, rice, enriched mashed potatoes, canned vegetables, corn syrup, fruit juices, canned chicken, scrambled egg mix and evaporated milk.

The state's attitude toward the program is seen in the law which says that "appropriate rules and regulations to assure the widest and most efficient distribution" should be set up.

In practice, however, the state puts no pressure on counties to distribute such commodities, spends no funds for administering the program and allows the counties to set extremely low eligibility limits.

NO MONIES ALLOTTED

Texas is the only state which provides no monies for the program. Instead, the county is assessed a fee. This places the burden on the very counties which are least able to afford this cost.

The decision about the commodities program is made at the county level.

The report outlined the problem in Willacy, which is among the 331 poorest counties in the country which lack a food program. A move to start such a program in 1967 was defeated by the commissioners' court. After Hurricane Beulah, this decision was reversed temporarily. For four months, commodities were distributed.

When this program was terminated by the commissioners' vote, the U.S. Department of Agriculture started a distribution program in May, 1968.

The report states that one obstacle to the acceptance of this program was "the belief of many farmers . . . that if a food program was made available, the Mexican-American field hands would not work."

The state establishes income limits for eligibility by family size, which range from \$110 for one person to \$230 for 6 and to \$310 for 10.

WILLACY LIMIT LOWER

Fourteen of the counties more or less match these maximums. But Willacy, during the temporary program when the county operated it, set up limits which were 60 percent below the state's. Liberty County (which was not included in the 18 studied) cut the top income for a family of four to \$150. This was the top amount permitted, no matter how large the family was, the report states.

Distribution points are few, requiring the poor to travel considerable distances. Often, the center is open only one day a month.

The food stamp program, despite deficiencies such as the high cost of the stamps and the inflexibility in buying them, was considered superior to surplus food distribution, in the commission's report.

Unlike the commodities program, the food stamp program is designed solely to feed the poor; there are uniform standards of eligibility and families can obtain a wider selection of foods.

EXHIBIT A

TOTAL TEXAS COUNTIES WITHOUT OPERATING, PLANNED, OR REQUESTED FOOD PROGRAM—OCTOBER 30, 1968

TEXAS (107 COUNTIES)

Andrews	Collin	Gregg
Aransas ¹	Collingsworth	Hall
Archer	Colorado	Hansford
Armstrong	Comal ¹	Harrison
Bailey ¹	Concho ¹	Hartley
Bandera	Coryell	Hood
Baylor	Crane	Hopkins
Bell	Crockett ¹	Hunt
Blanco	Deaf Smith ¹	Jack
Borden	Denton	Johnson
Bosque	Donley	Kaufman
Bowie	Ector	Kendall ¹
Brazoria	Edwards ¹	Kenedy ¹
Brazos	Ellis	Kerr ¹
Briscoe ¹	Erath	Kimble ¹
Burnet	Fort Bend ¹	Lamar
Calhoun ¹	Gaines	Lampasas
Castro ¹	Garza ¹	Llano
Chambers	Gillespie	Loving
Clay	Glasscock	Lynn ¹
Coleman	Gray	

See footnote at end of table.

McCulloch ¹	Reagan ¹	Taylor
McMullen ¹	Reeves ¹	Throckmorton
Mason	Refugio ¹	Upton ¹
Menard ¹	Roberts	Uvalde ¹
Midland	Rockwall	Van Zandt
Mills	Runnels ¹	Victoria ¹
Mitchell ¹	Rusk	Ward ¹
Montgomery	San Saba	Wharton ¹
Navarro	Schleicher ¹	Wheeler
Ochiltree	Shackelford	Wichita
Oldham	Sherman	Winkler
Palo Pinto	Sovervell	Wise
Parker	Stephens	Wood
Parmer	Sterling ¹	Yoakum
Randall	Sutton ¹	Young

¹ Counties of 10% or more Mexican-American population.

TABLE 1.—PARTICIPATION IN USDA COMMODITY DISTRIBUTION AND FOOD STAMP PROGRAMS OF COUNTIES WITH 10 PERCENT OR MORE MEXICAN-AMERICAN POPULATION IN TEXAS; OCTOBER 1968

County	Percent Mexican-American	Not participating	Food stamp	Commodity
Aransas.....	19.5	×		
Atacosa.....	45.4			×
Bailey.....	12.4	×		
Bastrop.....	10.7			×
Bee.....	36.1			×
Bexar (San Antonio).....	37.4			×
Brester.....	42.6		×	
Briscoe.....	11.1	×		
Brooks.....	68.9			×
Caldwell.....	28.5			
Calhoun.....	25.1	×		
Cameron.....	64.0			×
Castro.....	15.3	×		
Cochran.....	19.9			×
Comal.....	27.4	×		
Concho.....	20.1	×		
Cottle.....	11.8			×
Crockett.....	26.1	×		
Crosby.....	20.1			×
Culberson.....	38.5		×	
Dawson.....	23.8			×
Deaf Smith.....	18.7	×		
De Witt.....	17.0			×
Dimmit (Asherton City).....	67.0			
Duval.....	73.1			×
Edwards.....	33.0	×		
El Paso.....	43.6		×	
Fisher.....	14.5			×
Floyd.....	15.9			×
Fort Bend.....	24.6	×		
Frio.....	61.8			×
Garza.....	13.7	×		
Collad.....	35.0			×
Gonzales.....	20.1			×
Guadalupe.....	23.7			×
Hale.....	17.7			×
Haskell.....	10.3			×
Hays.....	36.2			×
Hidalgo.....	71.4			×
Hockley.....	15.8			×
Howard.....	10.2			×
Hudspeth.....	29.4		×	
Irion.....	16.7			×
Jackson.....	13.7			×
Jeff Davis.....	56.1		×	
Jim Hogg.....	76.9			×
Jim Wells.....	54.6			×
Karnes.....	37.3			×
Kendall.....	11.9	×		
Kenedy.....	80.5	×		
Kerr.....	11.4	×		
Kimble.....	13.5	×		
Kinney.....	47.6			×
Kleberg.....	41.6			×
Lamb.....	16.3			×
La Salle.....	64.2			×
Live Oak.....	34.2			×

TABLE I.—PARTICIPATION IN USDA COMMODITY DISTRIBUTION AND FOOD STAMP PROGRAMS OF COUNTIES WITH 10 PERCENT OR MORE MEXICAN-AMERICAN POPULATION IN TEXAS; OCTOBER 1968—Continued

County	Percent Mexican-American	Not participating	Food stamp	Commodity
Lubbock	10.9			×
Lynn	19.2	×		
McCulloch	14.8	×		
McMullen	28.1	×		
Martin	15.5			×
Matagorda	13.9			×
Maverick	77.6			×
Medina	37.0			×
Menard	23.4	×		
Mitchell	16.6	×		
Nueces	38.1		×	
Pecos	31.0		×	
Presidio	49.5		×	
Reagen	13.5	×		
Real	19.3			×
Reeves	40.4	×		
Refugio	31.7	×		
Runnels	11.3	×		
San Patricio	49.4			×
Schleicher	20.7	×		
Starr	88.7			×
Sterling	13.1	×		
Sutton	39.5	×		
Terrell	43.4		×	
Terry	15.1			×
Tom Green	13.7			×
Travis	12.3			×
Upton	12.4	×		
Uvalde	47.6	×		
Val Verde (Del Rio City)	44.2			×
Victoria	23.2	×		
Ward	12.0	×		
Webb	79.9			×
Wharton	14.8	×		
Willacy	63.4			×
Williamson	15.1			×
Wilson	37.0			×
Zapata	74.8			×
Zavala	74.4			×

TABLE II.—BACKGROUND DATA ON TEXAS COUNTIES NOT PARTICIPATING IN USDA FOOD PROGRAMS

County	Percent Mexican-American	Mexican-American population	Per capita income	National per capita rank	Percent of families with income below \$3,000—1958
Aransas	19.5	1,368	\$1,461	1,912	34.5
Bailey	12.4	1,129	1,607	2,288	32.3
Briscoe	11.1	396	1,427	1,825	38.2
Calhoun	25.1	4,170	1,420	1,798	26.0
Castro	15.3	1,368	1,418	1,786	35.0
Comal	27.4	5,431	1,401	1,733	26.4
Concho	20.1	738	1,288	1,392	42.4
Crockett	26.1	1,098	2,098	3,008	22.4
Deaf Smith	18.7	2,468	1,535	2,104	29.4
Edwards	33.0	764	1,713	2,516	37.1
Fort Bend	24.6	9,972	1,180	1,083	38.5
Garza	13.7	907	1,485	1,972	23.1
Kendall	11.9	698	1,434	1,848	41.1
Kenedy	80.5	712	1,510	2,028	
Kerr	11.4	1,920	1,473	1,946	31.5
Kimble	13.5	533	1,406	1,746	36.8
Lynn	19.2	2,092	1,504	2,017	35.4
McCulloch	14.8	1,358	1,401	1,730	43.8
McMullen	28.1	314	2,348	3,079	41.2
Menard	23.4	694	1,412	1,766	45.5
Mitchell	16.6	1,870	1,329	1,519	34.2
Reagen	13.5	512	1,761	2,625	19.2
Reeves	40.4	7,128	1,371	1,649	29.2
Refugio	31.7	3,484	1,424	1,812	36.3
Runnels	11.3	1,698	1,314	1,470	40.0
Schleicher	20.7	579	1,557	2,171	26.6
Sterling	13.1	154	2,851	3,122	29.5
Sutton	39.5	1,476	1,871	2,803	31.8
Upton	12.4	776	1,623	2,331	15.7
Uvalde	47.6	8,002	1,226	1,209	41.9
Victoria	23.2	10,767	1,432	1,843	30.9
Ward	12.0	1,792	1,726	2,552	16.6
Wharton	14.8	5,664	1,234	1,230	43.0

My name is Mrs. Andrea Arias, 911 Ave "M", Hondo, Texas, 78861, and my husband's name is Francisco Arias, employed at Gary Aircraft Corp., Hondo Air Base, Texas. We wish to file a grievance with the U.S. Commission on Civil Rights concerning an incident which occurred in Hondo, Texas on July 16, 1969. Two weeks prior to this date a neighbor, Mrs. Glen Wernette, complained to the City of Hondo about our livestock (2 pigs) that had come into her property. The city contacted us about this and told us we must make sure the pigs were tied or secured within our property. We made sure that this was done. Then on the evening of July 16, 1969 around 8:00 p.m. three men came to my house. They were: City Patrolman Blackwell, State Highway Patrolman Baecker, and a civilian who is a farmer Mr. Donald Muenink. The City Patrolman Blackwell informed me that he had orders to kill my pigs; I asked him for a paper or written order and he said it was not necessary. He said he had received a complaint about the pigs and was supposed to kill them that instant. I asked if they could possibly wait until my husband arrived or until I talked to him and they would not wait. By this time a crowd had gathered at my house and the three men who appeared to be intoxicated were insisting that I kill the pigs. They asked me to let them have my husband's rifle and then loaded it for me and when I would not kill the pigs they asked the people there if anyone would kill the pigs for me. No one would do it, they continued to insist that I should kill the pigs. Finally Mr. Donald Muenink said he would do it, he shot at the pigs with my husband's rifle and Patrolman Blackwell used his gun and killed one of the pigs. They left immediately after this happened.

I called my husband immediately and told him of what had happened and his supervisor accompanied him home and it was thru this man Lupe Sanchez the attempts to contact the Mayor of Hondo were made to get an explanation for what had happened. Mr. Sanchez made many calls to the courthouse and newspaper offices to call attention to this incident. The following day on July 17 a Mr. Elias Reyes, City Patrolman, came to my house as a representative of the city and told me to get in touch with the City Attorney Hugh Meyer, who was ready to pay me \$100.00 for the pigs. He told me to go to Mr. Meyer's office on Saturday, July 19. On Friday Mr. Sanchez was contacted by some unknown person who offered him \$350.00 for him to stay out of this whole affair. They did not want him to counsel us.

A Mrs. Antonio Garcia, who is an active member of the GI Forum Auxiliary, was contacted on Friday night by Mrs. Donald Muenink. Mrs. Muenink was interested in the case, and wanted to know if Mrs. Garcia had heard about it. She wanted Mrs. Garcia to be sure that her husband Mr. Muenink only did what he did to help me. However, Mrs. Muenink verified that the men had not been drinking.

I am seeking the help of the U.S. Commission on Civil Rights because I feel that a great injustice has been committed.

Mrs. ANDREA ARIAS,
Mrs. ANTONIO GARCIA,
Mrs. AMELIA HERNANDEZ,
Chairman, GI Forum Auxiliary.

—
AMERICAN GI FORUM OF TEXAS,
OFFICE OF THE EXECUTIVE SECRETARY,
Hondo, Texas, July 29, 1969.

DEAR FORUMER: The Uvalde GI Forum and Ladies Auxiliary will host a District V Meeting on Sunday August 3, at 10:00 A.M. at the Uvalde Neighborhood Service Center on Hwy 90 East.

District Officers for the 1969-70 will be elected at this time.

There are several civil rights matters pending in the area which need to be discussed. A young Mexican-American boy was a victim of a hit and run accident in Uvalde, Friday July 25. The local authorities as in the past have failed to conduct a proper investigation refusing to hold the driver of the car due to lack of evidence.

In D'Hanis a 13 year old girl was raped, tied to a tree, blind folded, and burned all over her body by five anglos. It seems as if they are suppressing evidence in this matter as usual. I am going to Uvalde, D'Hanis, and Hondo on Wednesday, July 30, 1969 to investigate. A report will be given Sunday.

Respectfully yours,

MIKE V. GONSALEZ.

P.S.—The Uvalde Groups are sponsoring a fund raising barb-B-Que. Tickets are \$1 and may be purchased at the meeting.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Albuquerque, N. Mex., July 17, 1969.

Hon. Dr. HECTOR P. GARCIA,
Member, U.S. Civil Rights Commission,
Corpus Christi, Tex.

DEAR DR. GARCIA: Enclosed is a self-explanatory letter from Mr. Gustavo Gutierrez, Arizona representative for the United Farm Workers Organizing Committee, listing allegations of violations of the civil rights of Mexican American union members.

Since the Equal Employment Opportunity Commission does not have jurisdiction in this matter, copies of this letter are also being referred to the Department of Justice, the Inter-Agency Committee on Mexican American Affairs, and the Arizona Labor Commission in hopes that they may be able to help.

Sincerely yours,

TOM E. ROBLES, *Director.*

Enclosure.

AMERICAN FEDERATION OF LABOR AND
CONGRESS OF INDUSTRIAL ORGANIZATIONS,
UNITED FARM WORKERS ORGANIZING COMMITTEE,
Tolleson, Ariz., July 14, 1969.

TOM E. ROBLES,
Director, Equal Employment Opportunity Commission,
Albuquerque, N. Mex.

DEAR SIR: The United Farm Workers Organizing Committee is conducting a strike at several grape ranches located in the general area west of Phoenix, Arizona. The strike began on June 17, 1969 and will probably continue until the grape harvest is finished. The purpose of this letter is to relate some of the actions of the Maricopa County Sheriff's Department during the strike and to request an investigation of this conduct.

While there has been no major single incident involving misconduct by the Sheriff's Department there has been a constant occurrence of small incidents which when viewed in their entirety establish a clear pattern of harassment of the strikers, organizers and pickets. This harassment by the Sheriff's Department infringes upon the civil liberties of those involved and represents a clear attempt by the police to intimidate all the farm workers, both actual union members and potential union members.

Some of the incidents which have occurred will now be described:

1. A Deputy Sheriff stood by idly while a ranch foreman "roughed up" a priest who works with the farmworkers. The priest had his strike buttons torn off his shirt, his hat taken off, filled with grapes and run over by a tractor. The Deputy's explanation for refusing to act was that his department was "neutral" in this labor dispute. The priest was told that if he wanted to take action he would have to proceed on his own; and after he did file a complaint, the Sheriff's Department tried to persuade him to withdraw it. On another occasion when a foreman ripped a picket sign out of the hands of one of the pickets, a Deputy stood by idly.

2. A union member who went to work on a ranch one morning was followed into the fields by a Deputy who then told the foreman that the man was a union member and had been picketing. The Deputy then demanded the man's identification, although he had done nothing wrong, and interrogated him for no apparent reason.

3. Under the guise of directing traffic the police waved the cars of workers into the fields of one of the struck ranches thereby preventing the pickets from talking to the workers in order to persuade the latter to join the strike.

4. The union members are constantly followed by the Sheriff's Department when they drive their cars anywhere and are constantly stopped by the deputies for no apparent reason or for minor traffic offenses which are tenuous at best. The union members are then required to show identification and answer questions. The police also sit in their cars outside the union offices during meetings and on other occasions.

5. After work one day a car load of union members was following a bus full of workers to talk to them about joining the union after the bus stopped. After following for a short distance the police got one car in front of the union members and one car behind them and then pulled them over. The police then requested to show identification and submit to interrogation. Again this action by the police was for no apparent reason and no one was charged. The obvious effect, of course, of the police action was to separate the union members from the bus and to prevent the union members from talking to workers in the bus when it reached its destination.

6. Several farmworkers have been fired for signing union authorization cards which is a violation of Arizona law. The police, after investigating, admitted clear violations had occurred, but refused to proceed with any prosecution on the grounds that they were "neutral" in this labor dispute.

7. A Deputy went into the fields, obtained some grapes and came back to the picket line and ate them telling the pickets how good they tasted, virtually taunting the pickets. Although this act is of course not itself illegal it is very symbolic in this dispute and becomes quite meaningful in the context of the other acts.

8. A Deputy went up to some pickets on a country dirt road and told them they had to walk twenty feet apart. When a picket responded that the law provided only that they not obstruct traffic, the deputy replied that the twenty foot rule was his "law" and if they wanted to get along with him they should obey his "law." On another occasion a Deputy told the pickets that they were not a union and therefore had no right to picket.

9. During the picketing one day, two Deputy Sheriffs each placed their cars at opposite ends of the picket line and drove slowly toward one another squeezing the pickets together until the pickets were finally forced to move to another location. Some of the pickets claim that they were actually physically pushed by the Deputies' cars. One woman became sufficiently frightened that she needed to be helped away from the scene.

The above described incidents comprise only a partial listing of the abusive acts of the Sheriff's Department. We are now in the process of compiling a more comprehensive and specific list of incidents involving police misconduct. The purpose of sending this letter in advance of the completion of our more detailed report is to obtain an investigation of these activities by the responsible governmental authorities as soon as possible. Since the harvest will be completed within a few weeks it is important that the action of the Sheriff's Department is investigated as quickly as possible.

We feel that the above described incidents as well as others clearly establish that the Sheriff's Department has not acted with neutrality in this dispute and has in fact been partial to the growers. Moreover the conduct when viewed in its entirety establishes a clear pattern of harassment and intimidation of farm workers who are attempting to exercise their constitutional rights of freedom of speech and freedom of assembly. There are also racial overtones since virtually all the farm workers are Mexican-American. Of course, another undesirable effect of the conduct by the Sheriff's Department is to undermine respect for the normal processes of government and to destroy any belief that people of all races, whether rich or poor, in fact receive equal justice under law in this country.

We urge that your agency as a responsible governmental authority investigate this matter and we feel that we are entitled to a speedy response to our complaints. We feel that this is really a very simple and appropriate request.

We will of course cooperate fully in any investigation. The address of our office is 9162 West Polk, Tolleson, Arizona. The telephone number is Area Code 602—936-4535.

Thank you for your cooperation in this matter.

Sincerely,

GUSTAVO GUTIERREZ,
Arizona Representative.

July 4, 1969

Twenty-Five Cents

A Journal of Free Voices

A Window to the South

The Texas Observer

Helping Texas' Migrants



Photo by Bill Bridges

HOME IN TEXAS — Texas is home of more migrant agricultural workers than any other state in the nation. Here, some children of migrant workers play at their home in the Chamizal section of El Paso.

Washington, D.C.

Disappointment comes regularly to Mexican-American farm workers of the Southwest. They live in crowded labor camps when there is work, and in miserable patchwork shacks when there is none. They leave families behind to travel thousands of miles in search of work, often in vain. When they are on the road, no one cares much what happens to them, and when they return home — 143,500 migrant workers call Texas home — they find their home state hadn't missed them.

But one of the biggest disappointments affecting Texas farm workers and those who care about them has been the performance of the Migrant Division of the Office of Economic Opportunity, now

Bill Hamilton

nearly five years old. Equipped with a bold mandate and provided substantial — though certainly not excessive — finances (\$27.3 million was given the division for national grants during fiscal 1969), the office has been timid and sloppy in its approach to assisting migrants in Texas.

Consider housing. In fiscal 1969 (which ended June 30) \$2 million of division funds were earmarked for that vital concern. Lest one think that a small sum for housebuilding, it should be explained that the Migrant Division is rarely in the business of building houses directly. The money usually is spent not on loans, materials, carpenters, and so forth, but on the administrative and training costs of organizing poor people to qualify and to build under the federal housing laws used by more-affluent Americans. Thus, an OEO dollar can be stretched over a considerable number of houses. The Migrant Division likes to think of itself as the "missing link" between migrant farm workers and their

Mr. Hamilton is an Observer contributing editor who lives in Washington, D.C.

participation in federal housing programs.

In Texas, however, the link is simply missing. Only one housing program has been tried, and it was scrapped, a dismal failure. The project died in the office of then-Gov. John B. Connally. The project came to Texas OEO late in 1966 when the governor's office applied for and received a grant of \$346,241 to build 132 homes and three community centers from materials obtained at Stinson Field, an abandoned air base near San Antonio. It was to be a self-help project — poor Mexican-Americans building their own houses with donated materials and expert supervision. "It was ill-conceived from the very beginning," said one of the OEO officials who processed the application for funds in Washington. "We tried to discourage it," he said, "but they [the governor's office] insisted on it." It should be remembered that in those days a special respect was paid the governor of Texas and

his wishes, because of his close relationship with then-President Johnson.

So the money was granted, a retired Army colonel was hired to direct the project, and work began. Four months later, after lots of bickering at every level, the project was abandoned. Six houses had been built. No one in Washington today recalls exactly what those six houses cost, but they probably weren't cheap. Unspent funds were transferred to OEO manpower activities in Texas. Col. Fred Deyo, director of the ill-fated project, told the *Dallas Times Herald* that "political fear and bigotry" among Connally's OEO watchdogs led to the death of the program. In Washington, an OEO spokesman admitted "I don't think the reasons [for killing the program] are particularly clear."

Ill-conceived or not, the San Antonio program was a housing program, the only one that the Migrant Division has dared to fund in the state. Ruth Graves, chief of the

Migrant Division, and a Texan, says something could develop in the future but nothing is being considered at the moment. Money is short, and no applications for housing programs have been filed from Texas lately, she added. OEO has some fairly successful migrant housing programs in California and elsewhere, but in Texas — where migrants are most numerous — there is nothing.

WHAT, THEN, does OEO's Migrant Division do with its money in Texas? The Educational Systems Corporation of Washington, itself a Migrant Division grantee (\$758,833 in fiscal 1969) has just published a summary of the division's programs — 96 of them in 35 states, eight in Texas. Of the eight Texas programs, most of which include more than one activity, seven operate job-placement type projects, six conduct adult education

Texas' Taxes: A Chance for Reform

Austin

Texas liberals have their best opportunity in years to begin reforms of the state's mishapen tax structure, a complex that puts a disproportionate share of the tax burden on individuals and lets business firms off far too lightly. If the liberals and some of the moderates of the Senate will determine to work together during the upcoming special session of the Legislature this summer, they can have the crucial say-so in this vital matter.

Also at issue is whether Lt. Gov. Ben Barnes is, in reality, a progressive. If so, he will aid the liberals — if the liberals come up with some sensible, long-overdue, and fair business taxes.

Perhaps, in the early going of the 30-day special session, we may see Barnes leading an effort to have both houses vote to override Gov. Preston Smith's veto of the one-year appropriations bill, which was, mostly, Barnes' and the business lobby's way of avoiding a tax increase this year. If that effort fails, as it should, then liberals must be ready with their tax program. Otherwise, we shall probably see an extension of the sales tax and, perhaps, a sprinkling of minor business taxes.

THERE WAS widespread evasion of responsibility on the question of state spending and taxation in the legislative session recently ended. Governor Smith proposed a taxation program that no one ever took seriously. He then sat back while the Legislature hemmed and hawed and scratched. When the one-year spending plan was resurrected, Smith made no bones in private conversations that he would veto the scheme. But he failed to say so publicly, an irresponsible act.

The legislative leaders, Barnes and Speaker Gus Mutscher, compounded the fiscal failure by permitting lawmakers not to consider a serious tax program. To write a serious two-year budget would, after all, have required a business tax of some impact, since individual Texans are, at last wearying of carrying most of the burden when new taxes are required. Three tax increases have been voted by lawmakers in less than two years now, and most of these have fallen heavily on individuals, primarily by extending the state and city sales taxes.

It is heartening to see Texas government at last beginning to accept some of its responsibilities in providing services, in not shrinking from spending the vast sums of money that are indeed necessary — and long have been necessary. Yet it will not do to continue to burden individuals with the load while corporations get off without meeting their social responsibilities.

Texas consumers paid \$807 million in taxes during fiscal 1968. The oil and gas industry paid \$240 million. And the only general tax on business, the franchise tax, yielded \$63 million. This is the present shape of Texas government's thinking on tax matters.

RAISING taxation on oil and gas (which were taxed at 5.4% of the value of their production in 1968), upping the franchise tax, instituting a state income tax (which 36 states now have, and which provides one-seventh of revenue to American states) — these are the things legislators, particularly the Senate liberals and moderates, should these days be considering.

The business lobby, evidently frustrated now by the governor in its hopes for avoiding new taxes this year, can be expected to work hard for extending the sales

tax (most probably by removing some items now exempted) and, perhaps, such things as a tuition (or "building use fee") increase. The lobby people are justifiably worried now; they know that the political climate will not likely permit extending taxation further on individuals — not without dire cost to many of the legislators' and some state officials' political futures, anyway.

Good Work

In this day of intensifying concern about the problems that narcotics pose for society, it seems strange that the federal government would be considering closing a Fort Worth hospital that serves the western half of the country in treatment of narcotics addicts. Sen. Ralph Yarborough thought so, anyway. He won a promise, in March, from Robert Finch, the secretary of the Dept. of Health, Education and Welfare, not to close the hospital until hearings could be held on the matter.

Dr. James Maddux, head of the Fort Worth hospital, said he believes information was developed in the hearings that Yarborough conducted that had not previously been available to Finch. Witnesses testified that the Fort Worth hospital and another federal institution at Lexington, Ky., are the only large hospitals in the nation for treating narcotics addicts.

Because of Yarborough's hearings, the hospital is now to remain open.

The U.S. political system works if it is manned by dedicated people who have — and employ — highly developed social consciences. Once again, the people of this nation are in Senator Yarborough's debt.

courses, and six focus on vocational training. In short, almost the total effort of the Migrant Division in Texas is directed toward giving migrants new job skills. Only a pre-school educational project in San Antonio and a day-care project in Tahoka break this otherwise total orientation to jobs.

And you are right if you suspect that this job training implies, for the most part, taking the migrants out of the fields, only to put them in the factories. They are offered such vocational opportunities as in auto body and fender repair, diesel mechanics, construction, machine tool operation, small appliance repair, and welding. This is not to say that these vocations are dishonorable, nor is it to say that skills have no place in a migrant program. But it does suggest that the Migrant Division in Texas, by putting virtually all of its resources into manual job-oriented projects, has given a narrow, unimaginative, and basically unresponsive interpretation to its mandate.

Quite a few millions have been spent on these job programs, with the money nearly always granted by the Migrant Division to the Governor's OEO liaison for transmittal to the Texas Education Agency, which ran the local-level programs through the school districts. In 1966, according to reports issued by OEO in Washington, the Texas OEO received from the migrant division \$6.6 million; \$5.2 million in 1967; \$3.9 million in 1968; and, in the just-ended fiscal year, \$1,350,000 in new money plus additional "reprogrammed" funds.

While Connally was governor, virtually all OEO programs had to have support from his office to qualify for funding. This was true even of migrant programs, although the Migrant Division legally can, and does in other states, make grants to local groups directly. When they tried to skip the middleman in Texas, Connally raised hell with Sargent Shriver, then the OEO director. Shriver knuckled under and passed the word down: get along with Connally.

Politics is politics, and the fact that Shriver wanted to placate the president's Texas cronies was no big deal. But the Texas migrant training programs conducted through the school districts were mostly of a very dubious value, and the Texas Education Agency's administration of OEO funds was a disaster. The millions filtered down through the TEA framework to the local school superintendents, who were able to strengthen their patronage by spreading the wealth among their favorite teachers, and providing stipends to the trainees — a normal part of the program — as a means of winning friends.

"They were very bad programs," said a former OEO functionary who watched them closely. In 1967 programs were being run in 25 to 30 school districts, with the adult migrant trudging to school nightly, sitting six hours at a desk designed to fit his children, listening to his lessons, and picking up \$30 to \$40 a week for the

chore. Evaluations by OEO were worse than disappointing. In 1967, out of 4,200 enrollees in remedial classes for high school dropouts, only ten were able to qualify for a graduate equivalency degree, according to OEO sources.

WORSE THAN the ineffectiveness of the local training schools, however, was the Texas Education Agency's cavalier handling of federal money. An audit of TEA migrant programs by OEO a year ago uncovered more than a million dollars which had been mislaid and "lost." Under Treasury rules, federal grants which are not spent the first year can be "reprogrammed" to the grantee for a second year. But if the money still is not used it goes back to Washington at the close of the second year. That was in 1967, when the Vietnam war had cut deeply into domestic programs. OEO's Legal Services division was, at that time, searching high and low for cash to fund a South Texas legal aid program. The idea died for lack of money. TEA, meanwhile, had a million dollars it couldn't manage to spend.

Although nothing was ever said officially, there were rumors after an audit of TEA migrant money in Austin that a sum in the range of \$100,000 was lost, strayed, or stolen. Ruth Graves at OEO in Washington says there was confusion, "but I think at this point all the money has been accounted for." No malfeasance; just good, old-fashioned bureaucratic sloppiness at the TEA.

After the money difficulties and critical evaluations, OEO finally cut back on its dealings with the Texas Education Agency. Even so, it gave the state agency \$1,350,000 for pre-vocational and vocational programs at Laredo Junior College and Connally Technical Institute at Harlingen in fiscal 1969. Most of the reprogrammed money is still in the grasp of the OEO advisers of the new governor, Preston Smith. Even now that Connally is gone and direct-funding for migrant programs has come to Texas (El Paso, Corpus Christi, Edinburg, and one or two other places are now funded directly from the Washington OEO) the governor's office still controls about 72% of the \$5.4 million being spent on Texas migrants by the division this year.

The programs at Laredo and Harlingen, as others before them, mainly offer courses in job skills that cater to the needs of the economic interests. If LTV needs welders, welding it will be. If Ford Motor Company wants body men, then migrants will be taught body work. In its summary of the Migrant Division's activities in Beaumont, the Educational Systems Corporation reports that "courses taught in the program are geared to the needs of area industry." No one gives much thought to what the migrants themselves might want. Grass-roots organizations, which are considerably closer to the farm workers, have found it mighty hard to compete for funds against the Texas Education Agency.

BUT, OF COURSE, to pitch right in on the side of the farm workers is an

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A Window to the South

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We will serve no group or party but will heed hard to the truth as we find it and the right as we see it. We are dedicated to the whole truth, to human values above all interests, to the rights of man as the foundation of democracy; we will take orders from none but our own conscience, and never will we overlook or misrepresent the truth to serve the interests of the powerful or cater to the ignominy in the human spirit.

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unpopular tactic—remember the recent VISTA experience in Del Rio. If the Migrant Division teaches are welding to a few farm workers, that's one thing; but if it tries to teach those farm workers that they, along with the rest of us, can be full citizens, with a right to make demands, assert themselves, politically and generally seek to grasp control over their own destinies — well, that's quite another thing.

The Migrant Division seems to show no inclination to disturb anyone's comfort, and not much inclination fundamentally to alleviate anyone's discomfort. No one believes this more than the young,

increasingly-militant migrants in Texas—and it should be pointed out that in 1967, half of the migrant farm worker population was under 25 years of age, and one-fourth of them were teenagers, 14 through 17 years of age. Not only are these young people discontent, but they will not be quiet.

They believe that this loudly-trumpeted and highly-visible governmental program, established to respond to their needs, is not doing the job. They think that OEO's Migrant Division has become a part of what they must overcome if they are to accomplish the fundamental change that would allow them to live a productive and

self-sufficient life.

Of course, the Migrant Division would not agree with this analysis of their performance. They would claim progress, and point to the high school equivalency diplomas awarded, the number of job skills acquired, the number of incomes raised, and maybe even to six houses built. But, as Robert F. Kennedy wrote in 1965:

"Progress is a nice word. But change is its motivator. And change has its enemies.

"The willingness to confront that change will determine how much we shall really do for our youth and how truly meaningful our effort will be."

The TEA's Rebuttal

Austin

The *Observer*, seeking routinely to check out the facts of the foregoing story by its contributing editor Bill Hamilton, sent copies of the manuscript to the Texas Education Agency and the governor's Texas Office of Economic Opportunity. The officials were asked to read the manuscript and, if they wished to reply, to contact the *Observer*. Nothing was heard from the state OEO. TEA people asked that they be given the opportunity to discuss the story with the *Observer*; the agency's Dick Gartner, director of special adult programs, and Ed Randall, director

of school audits, were thereupon interviewed.

The first point made was that the figures cited in Hamilton's ninth paragraph, amounts of money spent on job training programs, are higher than the amounts administered by the TEA. Randall told the *Observer* that in fiscal 1966 \$2.6 million was distributed to 24 local school districts, and about \$2.5 million of that was spent locally; in 1967 some \$3.8 million was distributed to 31 schools, of which about \$3.5 million was spent; in fiscal 1968 about \$2.5 million was distributed to 28 schools, and final total expenditures are as yet unknown.

Hamilton replies that his figures cited

come from national OEO migrant division sources in Washington and represent amounts of money distributed to Texas agencies by the migrant division of the federal OEO. It appears, then, that more than \$8 million of federal migrant division money went to agencies other than the TEA.

Gartner, replying to the point in Hamilton's 11th paragraph about superintendents filling vacancies in the migrant teaching program as a means of enhancing their patronage powers, commented that usually schools found it difficult to secure enough teachers to staff the program, in which, usually, classes were from 4 to 10 p.m.

As for the point Hamilton makes in paragraph 12, that only ten of 4,200 enrollees qualified for high school graduate equivalency degrees, the TEA officials said, in rebuttal, that the adult migrant education program was not designed for the migrants to get equivalency degrees, but to enable them to read and write enough English to be able to participate in the job training aspects of the course, and to get along on any job later obtained.

SPEAKING TO the charge Hamilton levels in paragraphs 13 and 14, that \$1 million of money allocated to TEA by the federal migrant division was not spent by the Texas agency, Randall and Gartner deny that this was true. Randall said "this probably was the best-controlled program we've had, and probably the smallest in the amount of money."

Most of the TEA officials' rebuttal to paragraphs 13 and 14 appears, on analysis, to be directed to the suggestion that the money was misappropriated. As for the charge that the TEA failed to use \$1 million of federal money in Texas, it seems, in retrospect, that the TEA officials did not contest this very much, in speaking to the points raised in the two paragraphs. With Randall doing most of the talking, the two TEA men denied the thrust of the story throughout, particularly suggestions of misappropriation. But as for money not being used at all, the *Observer* was not told

Cold Statistics and a Mandate

Washington, D.C.

The Economic Opportunity Act of 1964, which created OEO, gave the Migrant Division this assignment: "To assist migrant and seasonal farm workers and their families to improve their living conditions and develop skills necessary for a productive and self-sufficient life in an increasingly complex and technological society."

Certainly there is room for such a program to have impact in Texas—first, because the state has such a large population of migrant farm workers, and, secondly, because neither the state nor local governments has done much to acknowledge the poverty and special problems which these workers and their families face. The U.S. Senate Migratory Labor Subcommittee reported in February that 117 of Texas' 254 counties had more than 100 migrants each residing within their borders at some point during 1967. That ranged from 110 workers in the Burleson County blacklands to 37,600 in the "Magic Valley" county of Hidalgo. In that year some 240,000 migrant workers toiled on farms and ranches in the state. Nationally, when one thinks of migrant

farm workers he thinks of Texas; about 37% of the national migrant labor force comes from the Lone Star State.

The Migratory Labor Subcommittee found that "migrants live in dilapidated, drafty, ramshackle houses that are cold and wet in the winter, and leaky, steaming, and excessively hot in the summer. Insufficient ventilation, poor or no mattresses, unsanitary privies and bathing devices, and unsanitary storage and disposal of garbage and refuse are too often the prevailing conditions."

A 1967 survey by the U.S. Department of Agriculture showed that two-thirds of the migrants working in Atascosa County live without indoor plumbing, and three-fourths without hot running water. There's no reason to think conditions are better in other Texas counties.

Needless to say, migrants want better housing. A 1962 survey in California found that migrant farm workers ranked housing second, just below pay, in seeking employment. From its own field interviews, the Migratory Labor Subcommittee reported that "numerous workers place housing even ahead of wages in making a job selection." B.H.

much of that during the interview of some 40 minutes.

The U.S. migrant division money was deposited in the Federal Reserve Bank in Dallas, and the TEA was sent a letter of credit. Then, school districts wishing to participate in the adult migrant education program were asked to submit proposals. After approval of each local program the individual school district was in turn sent a letter of credit by the TEA. The school districts later sent invoices of expenditures to the TEA, which compared the invoices with the district's budget submitted earlier for the program.

Audits were conducted by several different people. Randall says an independent Austin firm substantially corroborated TEA audits. The only questions about the TEA handling of the adult migrant education program, Randall says, were routine ones about a few hundred dollars worth of stipend checks owed course enrollees that were not picked up by those enrollees. This amounted to a minimum of \$275.32 in fiscal 1967 to \$838.68 in fiscal 1968.

However, the foregoing explanation by the TEA officials (as taken from the *Observer* editor's notes) speaks, as was noted above, to the question of whether money was misused by the TEA, not whether some of the money was not used at all.

Hamilton's point is that \$1 million, perhaps a bit less, was not used for the benefit of Texas migrants by the TEA because of administrative bungling. This is the stated belief of others, not TEA employees, who have had some knowledge of the TEA's role in administering funds for educating adult migrants.

Frank J. Duggan, Southwest regional OEO legal services director, tells the *Observer* he heard of the oversight a year ago, from Hamilton, who at the time was a member of the Washington staff of Sen. Ralph Yarborough. Duggan thereupon sought to have the unexpended money funnelled into a South Texas legal defense program. However, Duggan tells the *Observer*, a federal OEO auditor told him that due to federal regulations the money was unavailable. It is understood by Duggan and, after some inquiries, by the *Observer*, that the prohibition on using the money for legal services was imposed by the usual U.S. Treasury Department provision that money not expended in a specified period must be returned to the federal treasury, as Hamilton explains near the end of paragraph 13.

Further, a former member of the staff of the Texas OEO's migrant division, who has requested anonymity, but whose character and veracity are attested to by the *Observer* editor, affirms that it also was his understanding that some \$1 million was not spent by TEA because of oversight. The source was on the staff of the state OEO migrant division during the period in which the money was supposed to have been spent but was not.

The migrant division of the Texas OEO no longer exists. It was established in 1964, when then-Gov. John Connally was forming his own OEO to administer the war on poverty in Texas. But since the latter months of the Connally administration, there has been no migrant division, it being closed down when the division head, Rudy Marroquin, took a job in Fort Worth with a federal agency.

AS FOR THE allegation that \$100,000 was misappropriated, evidently this is no longer thought to have been the case; witness the Ruth Graves (Washington OEO) quote in Hamilton's paragraph 14. The TEA's Gartner and Randall were at a loss to explain how the story about the

allegedly missing \$100,000 got started. They said they had never heard of it. In any case, it appears that federal officials are not concerned about the matter, though for a time, clearly, they were.

In response to Hamilton's paragraph 15, about the federal OEO cutting back on its dealings with the TEA, Gartner and Randall said they know nothing of this, either. They note that the federal money available for the program has been cut back, and this is the reason that, instead of some 30 Texas public school districts running the program locally, two junior colleges in Texas are currently operating it, as Hamilton relates in that same paragraph. G.O.



A Texas Migrant Child

Money for Texas Water

Austin Whatever doubts may have lingered as to which of the 10 proposed constitutional amendments that are to be voted on Aug. 5 is to have the blessing and the no-holds-barred support of the incumbent administration should have been dispelled once and for all on the afternoon of June 9. That was when almost all the big guns in the state Democratic Party's conservative establishment dutifully trekked to the House of Representatives chambers here to see and hear a slick presentation in behalf of the proposed \$3.5 billion, repeat billion, Texas Water Plan expansion.

The occasion was the first meeting of the newly formed Governor's Committee of 500—a group hand-picked by Gov. Preston Smith to beat the bushes in all areas of the state in an attempt to pass Amendment No. 2 on the Aug. 5 ballot. Knowing full well what political rhubarbs have been started in some water-rich sections of the state at the very mention of diverting water to areas with water deficits, the governor chose carefully to achieve a balance of committee members from a cross-section of Texas. To cement that and by-pass possible reaction to his leadership, Smith prevailed on his three predecessors in office—John B. Connally, Price Daniel, and Allan Shivers—to serve as co-chairmen of the committee, thereby providing an endorsement of the plan from all segments of the conservative wing of the Democratic Party. (Shivers did not attend the meeting, however, because of the injury of his son a few days earlier in a diving accident on the Georgia coast.)

Amendment No. 2, simply stated, would authorize the state to sell \$3.5 billion in revenue bonds, backed by the state's credit, to finance redistribution of the state's water to areas where that commodity is in, or is expected to be in, short supply. It also would remove the present 4% ceiling on interest on water bonds. If voters okay the proposal, the \$3.5 billion would become a lever for state officials to try to persuade the federal government to match with the remaining \$5.5 billion of the expected \$9 billion price tag on the plan. So far, there has been no firm commitment from the federal government.

Not only would the plan allow for the redistribution of water from areas regarded now as having a surplus, it envisions an elaborate system of channeling up to 13 million acre feet of water annually from the lower Mississippi River through a network of canals stretching across northern Louisiana, northern Texas, and into eastern New Mexico. It is reckoned that water problems are as serious in that part of New Mexico as in West Texas, the

major benefactor of the Texas Water Plan. New Mexicans will be expected to pay a part of the tab, should they opt to join in the plan.

SMITH MADE it clear at the outset of last month's meeting that to oppose passage of Amendment No. 2 would be tantamount to being un-American or, worse, un-Texan. (The bumperstickers to be distributed by the committee resemble Texas flags.) "I think your presence indicates your deep concern for the future of Texas," the governor told the assemblage. "I think your presence is an indication of your devotion to Texas and your desire to serve the state we all

By an Observer correspondent.

love so well." He went on to say that former Governors Connally, Shivers, and Daniel "have been tested and found true" in their devotion and dedication to the state. It now was the turn of the 500.

The hundreds who attended (not all 500 did, and certainly not all of the 150 representatives or the 31 senators were there) were treated to speeches by Smith and Daniel before Connally, by far the best orator of the group, began a slick presentation of what obviously is to be the campaign message in the coming weeks. Flanked by two 10-foot-square screens on the floor of the specially darkened House chambers, Connally read an inspired account of the state's projected water needs while a pair of projectionists quietly shuffled through a series of color slides (provided by various state agencies) to illustrate points in Connally's remarks. No areas of the state were neglected in the presentation. All bases were touched, but it remains to be seen how effectively.

Smith acknowledged the regional feuds over water that have plagued earlier attempts to devise a functional statewide water plan: "Water has been the primary issue in innumerable political campaigns and unlimited debate in legislative halls session after session — and generally with negative results. The great diversity of our regional interests — lack of complete understanding of our common need and adequate supply, the legal entanglements involving water rights — and above all the absence of state leadership, constituted the major factors inevitably resulting in stalemate of all proposed statewide water programs until several decades ago."

IN ADDITION to employing 500 members of the party's establishment, Smith has turned over the job of packaging and promoting Amendment No. 2 to former White House press secretary George Christian, now the head of the newest

Austin-based public relations firm, which is landing more and more accounts as time passes. Christian's offices in Austin's First National Life Building are serving as headquarters for the committee. And he assembled and distributed hundreds of copies of the bound Texas Water Plan together with sheets of information on the amendment's purposes and the names of the chosen 500.

Smith also hand-picked various committee heads to work with business, industry, agriculture, lawyers, and so forth in promoting the issue — and raising funds. The job of raising money (Christian estimated the group would need \$200,000 as a minimum) went to Edward P. Clark, former U.S. ambassador to Australia, former opponent to Smith for the Democratic nomination for governor last year, and close associate of Connally and Lyndon B. Johnson. Clark managed at least one passing reference to the former president during a pep-talk with his committee members after the general session. Clark was given what Capitol observers enjoy calling a "blue ribbon committee" to help raise the money.

Although Christian told the finance committee that the campaign would be run just as any other political campaign ("cash in advance" for advertisements), Clark insisted that donations and contributions were tax-deductible. He offered to obtain an opinion to that effect from the top tax expert in his own law practice, but he and others balked at the idea of requesting an opinion from fellow Austinite R. L. Phinney, regional director for the Internal Revenue Service. Commented Clark: "I'd be shocked if anyone said these were anything but a donation to a community civic project."

What backers of this project are eyeing is the potential of that \$3.5 billion in bond money. For one thing, it will cost the state's water users (those designated as the eventual payers of this plan) at least that much more in interest payments alone (see *Obs.*, Feb. 21). And bond merchants stand to make about \$10 million in the sale of those bonds. Banks stand to gain hundreds of millions more serving as depositories for the billions. Water users would pay it all through the purchase of water.

WHAT SMITH and his army of 500 face is a reluctance on the part of many Texans to approve bond issues. There are those who are still sore at the passage of a \$75 million issue by Connally to build new state parks. Several major bond proposals — including a multi-million dollar one attempted by the Houston Independent School District — have been crushed overwhelmingly at the polls in recent months.

But the most telling point may prove to be the remaining nine issues on the constitutional amendment ballot. Smith and legislative leaders may find the water plan caught in a voter backlash come Aug. 5 that extends beyond the scope they want. It is common knowledge around the Capitol that Smith and House Speaker Gus Mutscher oppose the amendments on the ballot next month that call for annual sessions of the Legislature and a hike in the ceiling of the state's welfare payments. But general voter hostility to having the legislators meet every year, or, especially,

to increasing the amount of tax money available to the Welfare Department could lead to the downfall of all ten issues on the ballot Aug. 5, including the water plan.

Hence, the need for the committee of 500; for Connally, Daniel, and Shivers; for George Christian; for the packaged sell throughout the state for Amendment No. 2. There is no Governor's Committee of 500 ... or even 100 ... or even 5 to promote passage of the welfare amendment — an item rejected by voters last November. The welfare proposal is not a "safe" issue for the Smith administration

or for former governors to endorse.

It appears it will fall to Lt. Gov. Ben Barnes to steal the play on this one. Barnes reportedly is preparing his own committee to work for passage of that amendment to lift the ceiling on the state's welfare payments from \$60 million to \$80 million. Houston attorney Leon Jaworski, who is prominent in Texas conservative Democratic circles, will lead the effort. Even if Barnes is successful, Texas will remain the only state in the nation with a ceiling on its welfare payments imposed by its constitution. □

Texas Demos and Reform

Houston

Ever since that debacle of a Democratic convention in Chicago last summer, the old guard Democrats and the new have been engaged in a civil war. Many liberals believe the party must reform itself or die, so national party chairman Fred Harris appointed reform-minded Sen. George McGovern to head a Commission on Party Structure and Delegate Selection. When a task force of the commission visited Texas recently, it heard of the civil war that Texas Democrats have been fighting for years.

The commission was entangled in controversy from the moment it announced it would visit the state. It infuriated Texas party leaders by neglecting to inform them first of the impending visit. Jim Wright, the Fort Worth congressman who headed the Connally Democrats' presidential campaign committee last year, wrote an angry letter to a national committeeman complaining that the McGovern commission had scheduled a hearing in Austin without notifying "those of us who managed the successful campaign last year." When it became clear that the present conservative leadership of the State Democratic Executive Committee was going to boycott the meeting, the commission decided to meet in Houston instead of Austin.

State Rep. Lauro Cruz of Houston, a liberal, was the first person to appear before the task force. He and Will Davis, former Gov. John Connally's state party chairman, immediately began wrangling. After Sen. Birch Bayh of Indiana, the chairman of the task force, tried, without success, to get quiet in the meeting room, he commented with a grin, "This is going to be an interesting session."

It was

THE CHARGES AND counter charges hurled by liberal Democrats and holdovers of Connally's conservative hierarchy were nothing new to observers of Texas politics. But both sides seemed to welcome the opportunity to review their grievances before a panel of out-of-staters.

In addition to Bayh, the commission

included LeRoy Collins, former governor of Florida; Peter Garcia, a California labor leader; Dave Mixner, former chairman of the McCarthy Youth Group; Jack English, New York national committeeman; and Albert Peña, a Bexar county commissioner and a leading Texas liberal. Will Davis, a member of the parent Commission on Party Structure, although not a member of Task Force "C," also sat with the group.

The meeting was held in the basement of the Astroworld Hotel. The small meeting room was decorated with a jovial elephant and other circus animals, but no donkey. Approximately 50 observers attended the meeting, most of them vociferous representatives of Harris County's liberals.

The most vituperative exchange of the day was between Albert Peña and Frank C. Erwin, Jr., a former national committeeman from Texas. Erwin accused Peña and other liberal Democrats of having elected conservative Republican John Tower to the U.S. Senate. Peña, in return, accused Erwin and the Connallycrats of putting Allan Shivers, a former governor with decidedly Republican leanings, on the delegation to the Chicago convention.

"Our problems with the Democratic Party are with people like you," Peña said, and the audience cheered.

"I've been losing public meetings like this and winning elections for years," Erwin answered.

"You've been stealing elections for years," Peña said.

"You're lying. You're a liar," Erwin answered.

"I still say you stole the election. I say you're a liar," Peña said.

Erwin looked at Senator Bayh and growled, "This gives you some notion of how our precinct elections work."

ERWIN READ A long letter from Elmer Baum, Gov. Preston Smith's state party chairman. The letter explained that the SDEC chairman could not be present because of "a year-long commitment to attend a medical convention on the West Coast." Baum's letter told what a good record Texas Democrats have compiled and explained how the state party is set up.

"There is little, if anything, wrong with the Democratic Party in Texas, and many things right with it," Erwin said on his own. "There is no discriminating and any time we find it we stop it."

The only other conservative Democrat to appear before the commission was John Peace, a former Bexar County state committeeman. He defended the conservative reign, explaining, "The Democratic Party under attack here today produced two vice presidents, one president, and many other public officials of distinction. Our record is equal to or superior to any other major state in the nation in producing results for the Democratic Party."

Few of the other witnesses had anything complimentary to say about the state party or its leadership. Both Lauro Cruz and Curtis Graves, the black legislator from Houston, charged that the state party discriminates against racial minorities. Cruz told of a Mexican-American woman in South Texas who allegedly was taken off the welfare rolls because she voted the wrong way. "The state party is cheating my people," Cruz said. "The generation behind me is less patient than myself. I hear their footsteps growing louder. I know I may be ground under their feet. ... Which is the greater crime, stealing a sacred right to vote or burning a building? I think both are equal."

Cruz said Texas Rangers are used to intimidating Mexican-Americans at the polls. "The presence of a Texas Ranger anywhere in South Texas makes the Mexican-American *persona non grata*," he said.

GRAVES BACKED UP Cruz' allegations with stories of discrimination against blacks. "There is a systematic attempt to keep voting down so that conservative Democrats who are actually Republicans or Wallaceites in sheep's clothing can remain in power," he said. "The party is the people who send the Rangers out each time. Sometimes they stand with rifles outside voting places. I

don't know if rifles in white men's hands intimidate you, but they intimidate the hell out of me!"

Graves charged that all of the blacks on the state's delegation to the national convention, except for himself and State Sen. Barbara Jordan, were "handpicked, paid, genuine Uncle Toms ... whites painted black."

At this point, Will Davis asked to insert into the record the U.S. Civil Rights Commission's most recent report on voting in the South. He explained that Texas was the only Southern state to get a clean bill of health.

"Who was president then?" Graves asked. "I wouldn't criticize the boss either." The audience whooped.

"If we want to be partisan about it, I'd rather have him than the one we've got now," Davis snapped back.

Graves read an affidavit from Roger Bell, who went to a precinct convention in a rural area to find he was the only black man there. According to the affidavit, a white man approached him and said, "Boy, what you doin' here? Don't you know this is white man's business?"

Graves concluded, "If you keep this process up, maybe we won't have a Democratic Party, because, like Lauro Cruz, I hear footsteps behind me. ... Violent change may happen in Texas because so many people are excluded from the decision making process."

MRS. BILLIE CARR, a Houston liberal leader, asked the task force to recommend that the national committee send observers to the state's precinct, county, and state conventions. She said that the SDEC is "really the governor's committee. It never goes against his interest." She called Texas political conventions "politics by conspiracy."

"In some precincts we have fist fights," Mrs. Carr said. "One precinct chairman had to go to the hospital last year. Houston even had one murder that resulted from a precinct fight." She suggested that secret balloting be held to select representatives to the county, state, and national conventions.

Hank Brown, president of the state AFL-CIO, had a number of specific proposals. They included:

- Abolish the precinct conventions and replace them with direct election of delegates to the county and state senatorial conventions.

- Elect delegates to the national Democratic convention at state senatorial district conventions, instead of at the state party convention.

- Enlarge voter participation by requiring that delegations to the national convention be selected in a voting system that includes permanent voter registration and longer registration periods.

- Encourage party primaries for the selection of nominees for president and

vice president.

- Abolish the electoral college and elect president and vice president by direct vote and by a majority, in a runoff if necessary.

- Provide free television debate time for majority party candidates.

- Lower the voting age to 18.

- Abolish all forms of discrimination within the electoral process.

CHRIS HARTE, a college student from Corpus Christi, also urged the commission to recommend lowering the voting age to 18. In addition, he suggested that a third person from each county be placed on the state committee to represent persons under 30.

Mrs. William E. Joor, president of the League of Women Voters of Texas, called for:

- Replacing annual voter registration with a system of re-registration by voting.

- Extending the period of registration

from the present Oct. 1 to Jan. 31 period to year 'round registration.

- Liberalizing resident requirements.
- Liberalizing registration requirements for armed services personnel.

The Houston meeting was the 13th of 17 regional hearings to be held by the commission. In a prepared statement, Bayh explained the purpose of the committee is to "search for and examine ways to bring the Democratic Party in touch with the needs and desires of the American people. ... Some are already suggesting that this will be an exercise in futility, that we should avoid any criticism of our party," the senator said. "The commission believes, however, that the long term well-being of our party demands that we distinguish between loyalty to our party's principles and servility to its name."

The commission will present its report at the 1972 Democratic convention. K.N.

HAIR

Austin
Land Cmsr. Jerry Sadler, who dips snuff, recently decreed that workers in his office must have, in the case of men, sideburns no longer than halfway down the vertical axis of the ear, and, in the case of women, skirts of sufficiently modest length, i.e., no miniskirts. Snuff dipping was not mentioned in Sadler's edict. One supposes that the commissioner considers long hair and short skirts more of a threat to departmental morale than a poochy lower lip. At least one Land Office employee disagreed and resigned prior to the effective date of the Sadler personal appearance policy.

Now another Austin governmental bureau leader has taken official note of the newest trends in grooming. R. L. Phinney, the district director of the Internal Revenue Service, and formerly the commanding general of the Texas National Guard's 36th Infantry Division, has issued the following memorandum to the supervisors in his district, quoted in full, to wit:

SUBJECT: Employee appearance.

Hair on the face is a provocative subject. Some men are wearing longer sideburns. A few of our male employees are experimenting with a little lower haircuts on the sides. Perhaps we should think about this.

The majority of men wear moderate sideburns. This is the continuing, conventional style. Some taxpayers associate the more extreme style of long sideburns with undesirable people and events. Because of these mental associations, an Internal Revenue man with long sideburns may evoke unfavorable reaction from some of the people with whom he deals. By the very nature of our profession we start with a handicap. It would seem unwise that we, of our own volition, would add handicaps by a mode of appearance that provokes some

folks. In other words, long sideburns might make a hard job harder.

We certainly are not suggesting that there is anything immoral or unhygienic about long sideburns. We are suggesting that short or medium sideburns are less controversial and provoke less unfavorable reaction from many of our clients — the taxpayers. Since our success depends so much on favorable taxpayer reaction, we strongly urge that our Internal Revenue Service men wear the moderately styled short sideburns.

We recommend that you have a one-to-one talk with those men who are inclined to experiment with long sideburns. We believe our folks will understand the advantages of reasonable conservatism and the disadvantages of extreme styles. We all know that a few of the business and professional people have adopted the "mod." But they have the advantage over us because their clients choose them and they can choose their clients.

We do not expect you to use a ruler or issue anatomy charts or other guidelines to indicate the desirable length of sideburns. As usual, this is a matter of individual judgment which we will leave to you and your folks. G.O.

Bussing Decision

Washington, D.C.

Things have changed in Washington. One of our correspondents got on a city bus there the other day. Who got on right in front of him but Liz Carpenter, former press secretary to former first lady, Lady Bird Johnson.

What's more, she got a transfer. □

Political Intelligence

• The rumor that has become recurrent on a biennial basis in Texas labor circles once again is heard: that Texas AFL-CIO secretary Roy Evans is in trouble as he and other state labor officials face reelection at the upcoming AFL-CIO convention, July 16-19 in Corpus Christi. Similar rumors were heard in 1967 prior to the AFL-CIO convention in Fort Worth but Evans emerged unscathed.

He and the AFL-CIO president, Hank Brown, often are said to be at odds over basic policy in guiding Texas organized labor. For example, last year in Galveston when the AFL-CIO's Committee on Political Education was considering endorsements in state elections, Evans openly was working to win full endorsement for Don Gladden, the Fort Worth liberal, over Ben Barnes in the lieutenant governor's race. This was against the wishes of Brown, who wanted no endorsement, believing that Barnes could be of value in attaining some of the legislative goals of the Texas AFL-CIO. Finally Brown won out, Gladden winning only a "recommendation," not an endorsement.

When rumors are heard of Evans being in trouble for reelection it usually is said that Brown is covertly behind efforts to displace the secretary.

• There is some talk in Austin now that Governor Smith might be looking around for someone to make a race next spring against Atty. Gen. Crawford Martin. Some of Martin's official opinions have not pleased the governor.

Early this year Smith was seeking to overturn a number of the eleventh-hour appointments of his predecessor, John Connally. Martin was asked by Smith for an opinion on the matter of when a number of appointive terms expire. The attorney general rendered a judgment that did not please Smith.

Then, Martin was asked by Smith about the constitutionality of a number of measures passed during the recent legislative session's closing hours; the governor questioned the bills because they had not actually been signed in the presence of members of one or the other houses of the Legislature, as constitutionally required. Martin came back with an opinion saying that it didn't matter, announcing this not long before Smith said he would veto the measures anyway. (And then, a few days later the governor signed a few of the disputed bills into law, raising thereby some more legal questions.)

Capital reporter Mary Jane Bode recently found, evidently by accident, a copy of a report prepared by a San Francisco consulting firm which raised questions about the efficiency of the operation of the attorney general's office, saying there

are, among other problems, a communications inadequacy between that office and other state agencies. Mrs. Bode found the report in an empty Senate committee room. She was unable to determine who had authorized its preparation or what purpose it is to serve.

LBJ Doin' OK

• The national press has uncovered another unusual perk that President Johnson has claimed for his retirement days. National reporters filed a number of stories on this general theme in January when LBJ was returning to Texas, wondering, for example, about Federal Aviation Agency equipment that had been installed at the LBJ Ranch landing strip; the nature of Johnson's Austin Federal Building accommodations, which include a lush office, helicopter service between the building and the ranch; etc.

Now the *Washington Evening Star* and columnists Drew Pearson and Jack Anderson advise that Texas Cong. George Mahon arranged to have Johnson's government pay extended from the customary six months to 18 months after the conclusion of his presidency. LBJ thus will collect \$375,000 in post-presidential pay.

• The *Star* also reports LBJ spent nearly a half million dollars in federal funds since leaving the White House, making use of two new laws which authorize liberal retirement and "adjustment" benefits for ex-presidents. Among LBJ's expenditures, the *Star* noted, was a \$100-a-day, six-day-a-week consultancy arrangement for Walt W. Rostow, the former White House foreign advisor who now teaches at the University of Texas. The Rostow fee adds \$28,800 annually to the hawkish foreign affairs professor's UT salary, which is thought to exceed \$35,000. Also on a \$100-a-day retainer is Yoichi R. Okamoto, the former White House photographer, now living in Texas.

LBJ's expenditures, the *Star* reported in its June 16 article, cover the costs of maintaining three Texas offices — more than either Texas senator — and purchasing \$200,000 in equipment for them, a \$28,000 salary for Tom Johnson, a former White House press aide, and other salaries for secretary and staff help. Johnson spent \$10,418 refurbishing an office which he is using temporarily at the Johnson City Bank — a building owned by his old friend A. W. Moursund of Johnson City.

All of the expenditures are quite legal. Under a new interpretation from Comptroller General Elmer B. Staats, Johnson can draw on federal funds through July 19,

1970, with a ceiling of \$900,000 authorized.

• Rostow has contracted with Macmillan to write two books, *The Diffusion of Power*, a study of the development of U.S. foreign policy in the 1958-68 decade, and *The Evolution of the World Economy*. Rostow is to realize an unspecified six-figure amount of money for the books.

• Walter Richter is soon to be replaced as director of the Southwest regional U.S. Office of Economic Opportunity, probably by an Arkansas Republican.

McDowell Sues

• Dr. Floyd E. McDowell, the former head of the Richmond State School for the Mentally Retarded, who was fired a year ago (*Obs.*, July 26, 1968), has filed a lawsuit in Austin which, if successful, would have considerable effect on the treatment of all state employees. In addition to \$160,000 damages and lost salary, McDowell seeks a hearing to air whatever charges his former superiors had against him and asks that Texas government employees "be free from arbitrary and capricious discharge, and be entitled to confrontation of witnesses and a hearing when necessary before termination."

McDowell believes he was fired for refusing to place the son of State Sen. Wayne Connally, Floresville, in his school. McDowell said the Connally boy comes from a county not in the Richmond school's jurisdiction and that, anyway, a waiting list precluded immediate admission. Thereupon the doctor was fired by the Dept. of Mental Health and Mental Retardation, whose leaders said McDowell had not been cooperative with others of the department, had acted arbitrarily in running the new Richmond school, and otherwise, on frequent occasions did not follow department policy.

McDowell, who has a national reputa-

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tion in mental health work, quickly found a position with the New York mental hygiene department. He was scathing in his assessment of mental health care in Texas and has expressed interest in seeing that practices of the state in this field are aired publicly.

His attorney is David Richards, who recently moved to Austin after having been associated for a number of years with the important Dallas labor law firm of Mullinax and Wells.

A RWY Victory

Sen. Ralph Yarborough has won a face-to-face confrontation with the Nixon administration, staving off efforts to close the 30-year-old federal narcotics hospital in Fort Worth by flexing his muscles as a Senate committee chairman. The hospital, operated by the National Institute of Mental Health at HEW, treats some 400 patients and has several hundred employees. It serves the western half of the United States.

Yarborough, chairman of the Senate Labor and Public Welfare Committee, called HEW Secretary Robert Finch on March 27 to question rumors that the hospital was to be closed, at the same time announcing his Health Subcommittee would hold hearings during April in Washington and Fort Worth. Finch promised the closing would be delayed until after the hearings.

The Texas senator conferred with Finch regularly, urging that the facility be kept open. Sen. John Tower and Cong. Jim Wright of Fort Worth and Earle Cabell of Dallas lent their support. On June 12, Finch called Yarborough and informed him that the administration had decided against closing the hospital. Yarborough's committee handles all legislation affecting Finch's agency, a fact which did not go unnoticed by the Nixon men during the hospital debate.

A dozen senators, led by Sen. Edward M. Kennedy of Massachusetts, have announced plans to form a liberal Senate club along the lines of the activist Democratic Study Group in the House. Yarborough has not indicated if he will join, but he was not at the organizational

meeting, in Kennedy's office.

Raymond Telles, the former mayor of El Paso who received several appointments during the Kennedy and Johnson administrations, has returned to El Paso and is considering a Democratic primary race against Cong. Richard C. White next year. Telles, something of a liberal, had remained as head of the U.S.-Mexico Border Commission until President Nixon replaced him in April. Prior to assuming that post Telles was U.S. ambassador to Costa Rica.

On Conservation

In the July issue of *Playboy* magazine Justice William O. Douglas, a zealous conservationist, labels the Army Corps of Engineers "public enemy number one." He says that due to faulty construction by the corps, "some dams in Texas lose 8% of their capacity annually due to silting. Numerous ones lose 2% a year and at least six lose 3% or more."

"The Waco dam in Texas is a classic failure of the engineers," Douglas says. "Inadequate testing of the foundation shales below the embankment were the cause of the disaster. Parts of the embankment slid 700 feet from the dam axis. Correcting the failure amounted to about 4% of the original estimated cost of the dam."

"Texas, as might be expected, was granted 24 projects for construction during fiscal 1969 that amounted to almost \$40 billion," the Supreme Court justice writes. "Everybody is taken care of. Under the cloak of flood benefits, recreation benefits, and the like, great vandalism is committed. Beautiful river basins are wiped out forever and one of our most pressing problems — water pollution and sewage — goes begging."

Douglas also writes, "Will Rogers used to joke that the best thing to do with the Trinity River at Fort Worth, Texas, was to pave it, the stream being a bare trickle at times. That wild idea is now a reality. Construction of a 370-mile canal from Fort Worth to Houston is under way, with 20 new dams (multipurpose) and 20 locks."

"*Playboy* magazine," responded Cong. Earle Cabell of Dallas, is an appropriate place for him to lay out his inaccuracies," he said of Douglas.

The Trinity River Authority, the Trinity Improvement Association, and seven Texas congressmen recently asked a House subcommittee to appropriate \$6.1 million over President Nixon's \$3.2 budget for the next year.

Miscellany

Another Ben Barnes business note: the lieutenant governor, his business sidekick Herman Bennett (the Brownwood contractor), and Dean Dauley of Grand Prairie will build a \$2.5 million, nearly

30-acre shopping center in Brownwood. Several major firms already have been announced as tenants. Bennett's construction firm will be the general contractor.

A. Y. Allee, captain of Texas Ranger Company B, often the target of complaints by Mexican-Americans in South Texas, was commended recently by former Gov. John Connally, Atty. Gen. Crawford Martin, and Highway Department Commissioner Herb Petry, Jr.

At a barbeque for Ranger Company B, Connally said, "We are here because we are a few people left in the world who appreciate the sacrifices and courage of Captain Allee and other Rangers here today have made in the performances of their duty in protecting the lives and security of people of this state."

Midlothian editor and Warren Report critic Penn Jones, Jr., now faces competition from another weekly in his town of some 1,500 persons.

Kountze editor Archer Fullingim is recovering at home from a heart ailment that hospitalized him for several days. Fullingim, in a recent column, speaks highly of the medical care he received but seems to believe most of the credit for his recovery goes to a prescription he had sneaked into the hospital, copied from a "doctor book" his father bought in 1912, which called for one ounce each of milkweed root, horseradish, mandrake root, black elder bark, juniper berries, root of the box elder, bark from the root of bittersweet, and a half-ounce of mustard.

Larry L. King Wins Nieman Fellowship

Cambridge, Mass.

Larry L. King, a contributing editor to *Harper's* and *The Texas Observer*, is one of 12 journalists appointed for the 32nd class of Nieman Fellows for the academic year 1969-70 to study at Harvard University.

King, who will suspend his writing activities for the duration of his Harvard experience, will study American history and American literature.

A former Midland and Odessa newsman, King now lives in Washington, D.C. Before beginning a free-lance writing career in 1964, he served on Capitol Hill for a decade as an aide to former Cong. J. T. Rutherford of Odessa and Cong. Jim Wright of Fort Worth.

He is the author of the novel *The One-Eyed Man*, and a non-fiction collection entitled *... And Other Dirty Stories*. His book on rural America will be published by Viking Press of New York, and is currently in progress. □

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The space for this advertisement was contributed by Bernard Rapoport, president of American Income Life Insurance Company, P. O. Box 208, Waco, Texas 76703. Mr. Rapoport sent in his fifteen dollars way last June and has been so kind since that Pacifica considers him paid up until the middle of the twenty-ninth century.

On Being Concerned

ON BEING CONCERNED — *The Vanguard Years of Carl and Laura Brannin*, by Miriam Allen deFord, published at Dallas, available through the Dallas Civil Liberties Union, Box 12371, Dallas, 58 pages. \$2.10.

Dallas

A federal penitentiary was the more-than-possible risk. The year was 1917. The times were utterly lunatic. And yet Carl Brannin wrote among other things in a letter to his draft board: "I am in receipt of draft questionnaire, form 1001, and am returning same unanswered. . . . My belief in the universal brotherhood of man leads me to be opposed to war and militarism. . . . If there are those who would say that I am disloyal because I stand out for the rights of the individual, let me say that I detest the Junkers of Germany, Austria, France, the United States, and all other nations with equal fervor. . . ."

By some miracle this improbable young man escaped imprisonment, was classified 4-F because of underweight, and a few months later married a young woman as outrageously brave and slight and dedicated to good as he was himself. Whereupon Carl and Laura Brannin began their joint march through almost half a century, fighting along the way every possible right battle for decency, as formidable a pair of scrappers as the Devil himself is ever likely to meet.

The deadly unemployment following World War I, the release of the war protesters from prison, the Sacco and Vanzetti case, the Great Depression, labor strife, race troubles, slums, ghettos, more wars, injustices of every hue and dimension *ad infinitum*, just name the good fight, the Brannins were in it. Just name the good group, the Brannins were in it: Carl was co-founder, for example, of the wondrously successful Unemployed Citizens League of King County (Seattle, 1932), an Alinsky-type operation that long antedated

Alinsky. Friends of Roger Baldwin's, they were charter members of the ACLU, NAACP, ADA, their roster has been an alphabetical marvel. Not least effective among their political activities have been their trenchant comments through the press in letters to the newspapers. Since 1933, when they returned to Carl's native Texas to make Dallas the base for their fight for human justice, they have educated a whole generation of Texans in democracy.

Then, as if all of this in-fighting and tutelage were not sufficient cause for exhaustion, the Brannins were indefatigable, fact-finding travelers, seeking out the larger context for their own passions and interests. They went, for example, to Mexico in 1922-23, on a trip to Europe and the Soviet Union in 1925 in order to see conditions for themselves. Lincoln Steffens had told them a couple of years before about the USSR, "I have seen the future, and it works." The Brannins went to see. Their letters and Carl's published reports on that trip, not included here, should certainly one day be made available to social historians as well as to other interested persons for they are too valuable not to be bound up in ready form.

In later years, the Brannins traveled to the Scandinavian countries to check on that scene, to Switzerland (one presumes for a rest), to Alaska, to Mexico for a second, comparative look. Recently, since Laura's death, Carl has been to Italy, Yugoslavia, Greece, Austria, Poland, Russia, Rumania, Czechoslovakia, Hungary, the Orient, and the Near East, always in the same spirit of social and political

exploration.

After their first long trip throughout Mexico in 1922-23, during which Carl served as correspondent to a press service for labor and left-wing papers—the Federated Press—the Brannins journeyed back up the West Coast from Salina Cruz to San Francisco, thence to Berkeley, where they settled for a time and eventually met Miriam Allen deFord, author of this biography, and her husband, Maynard Shipley. This was a fortunate meeting for us for Miriam deFord, a prolific and distinguished writer who is also editor of *The Humanist*, has at last put Carl and Laura Brannin's record into the public domain.

This is a good, if too brief, book. There is a skeletal quality about it (a fact traceable, one knows, to publishing costs) but at least the facts are there, and the book is professionally and lovingly written. That it is written with love will surprise no one who has ever known the Brannins. Carl is a "tough-minded" character, to use William James' phrase, and so was Laura. James, of course, was describing with his phrase the kind of mental and emotional poise that can view an imperfect, even hostile, world and yet find it good, sustaining, and worth giving one's soul to. Carl Brannin, at 80, looks about at the world with his sharp brown eyes, nods at its goodness, battles its evil, sets us all an example we none of us can ever quite match, and will be off next to check on only goodness knows where. These are magnificent people. This is a very good little book.

—BARBARA NELSON

Mrs. Nelson is a Dallas free-lance writer who says, "I was among those in the younger Dallas generation whom the Brannins influenced."

Country Music

Country Music, U.S.A., by Bill C. Malone, University of Texas Press, Austin and London, 422 pages. \$7.50.

Austin

About five years ago in discussion with Bill Malone and others, I remarked that modern country and Western music could

not seriously be considered folk music—that such people as Pete Seeger and Joan Baez were more representative as folk performers than Buck Owens or George Jones. Malone annihilated my point. I learned that the exact opposite was true, and never again did I doubt him as an authority on country folk music. Now all who are interested can comfortably learn about country music by reading Malone's book, *Country Music, U.S.A.*

Born and raised in rural, religiously fundamental East Texas, Malone is naturally at ease with the subject. He was early exposed to country music by two older guitar-playing brothers and a religious environment that emphasized "old-timey singing." A guitar player and singer himself, Malone has a voluminous repertory of songs. On several occasions I have heard him perform for hours without once repeating a number. His deep affection for country music is clearly revealed on these occasions. He will discontinue playing if he

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MEETINGS

THE THURSDAY CLUB of Dallas meets each Thursday noon for lunch (cafeteria style) at the Downtown YMCA, 605 No. Erway St., Dallas. Good discussion. You're welcome. Informal, no dues.

CENTRAL TEXAS ACLU luncheon meeting. Spanish Village. 2nd Friday every month. From noon. All welcome.

ITEMS for this feature cost, for the first entry, 7c a word, and for each subsequent entry, 5c a word. We must receive them two weeks before the date of the issue in which they are to be published.

finds his listeners are distracted; not simply because he is a sensitive person, but primarily because he believes the music to be worthy of genuine reverence.

Malone is an unusual combination of both artist and scholar, as his book bears witness. He is a professor of American history and specializes on the South and cultural and intellectual history. He earned a PhD from the University of Texas, where he wrote a doctoral dissertation on the origins and development of country music. This book is an outgrowth of that study.

MALONE TRACES country music from its Anglo-Celtic beginnings to its present, almost universal popularity. The early chapters are especially significant because of the heretofore woefully inadequate scholarly attention paid early hill-billy music. Malone explains why the South became the natural residence of traditional folk music style, how country music was influenced by Calvinistic religious attitudes, and how styles were transmitted from one rural region to another. He discusses the importance to country music of the revolution in transportation, the tremendous role the radio and phonograph industry played in the development and spread of country music, the emergence of the solo performer such as Jimmie Rodgers and Vernon Dalhart, the rise of the Hollywood singing cowboy, and the marriage of country music to the Western cowboy image. All of these factors and many others are carefully discussed.

A valuable aspect of the book is the extensive biographical data presented on many of the early country music artists. An entire chapter is devoted to Jimmie Rodgers, commonly and properly referred to as the father of country music. Malone has given more serious attention to Rodgers than has any other single critic (including Rodger's wife, Carrie, who wrote a highly romanticized account of her husband's career), and he is the first to deal with him so intensively. Malone, who plans to write a biography of Jimmie Rodgers, points out that Rodgers sang essentially every kind of Southern rural song and also introduced "one that was a product of his own native environment" — the blue yodel. The influence Rodgers exerted on later country performers is nothing short of profound. Many popular contemporary country artists acknowledge their debt to the "blue yodeler." For instance, Ernest Tubb and Merle Haggard have both recently re-released old Jimmie Rodgers' originals.

The twenties and thirties saw the simultaneous geographical expansion and commercial acceptance of traditional country

styles. Performers who thought their music had only a regional appeal found a still larger acceptance. Some country artists, such as Rodgers, the Carter family, Riley Puckett, and Uncle Dave Macon, found they could earn a living by performing on radio stations and giving live concerts. Nevertheless, the music by the close of the

thirties continued to have a largely rural appeal. Other forces were at work, however, which were soon to give country musicians a far greater audience.

Gene Autry, a country performer well before his rise to film stardom, helped give

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THE TRAGEDY OF LYNDON JOHNSON Eric F. Goldman	\$ 8.95	\$ 7.16	... AND OTHER DIRTY STORIES Larry L. King	\$ 5.40	\$ 4.40
THE AGONY OF THE AMERICAN LEFT Christopher Lasch	\$ 4.95	\$ 3.96	BLESSED MCGILL Edwin Shrike	\$ 4.50	\$ 3.60
THE UNFINISHED ODYSSEY OF ROBERT KENNEDY David Halberstam	\$ 4.95	\$ 3.96	TEXAS SKETCHBOOK: IMPRESSIONS OF PEOPLE AND PLACES Elroy Bode	\$ 5.00	\$ 4.00
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A VERY PERSONAL PRESIDENCY: LYNDON JOHNSON IN THE WHITE HOUSE Hugh Sides	\$ 5.95	\$ 4.76	THREE MEN IN TEXAS: BEDICHEK, WEBB, AND DOBIE Ronnie Dugger (ed.)	\$ 6.50	\$ 5.20

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country music a "Western" image through his portrayal of a singing cowboy in motion pictures. The honky-tonk was of even greater importance than Hollywood in giving country music a Western cowboy appearance. Here, uprooted ruralites, moved to the city to find work, sought relief in dance halls. Country music was being forced to adapt to urban surroundings. The noisy honky-tonks necessitated the adoption of electrified instruments and gave birth to western swing. Hillbilly music was being transformed into country music that now could be danced to in a new setting.

The war made country music a national phenomenon. As rural Southerners moved into industrial areas or joined the military, they carried their music with them. The immediate post-war years were the real boom years — country music then achieved "national popularity and profitability."

THE POST-WAR period witnessed two-fold division in country music style. In the first place, traditional styles were perpetuated by such artists as the Stanley Brothers, Flatt and Scruggs, Kitty Wells, Grandpa Jones — and most important of all — Bill Monroe, who was directly responsible for the emergence of the Blue Grass style. In the second place, other artists began to develop their own style, yet their music still reflected a strong rural country background. Performers like Eddy Arnold, Hank Thompson, and Webb Pierce marked a transition in country music by moving closer to popular music styles. "The individual who most successfully spanned the gulf between country and popular music was King Hiram 'Hank' Williams. . . . [As much as anyone else,] Williams reflected the inherited traditions of the rural South and the forces that have strived to urbanize it."

As country musicians yearned for greater popularity and financial success, it was to be expected that they would attempt to make their music more compatible with popular taste. In fact, country and pop music seemed to have successfully fused by the mid-'60's. Buck Owens did more than any other single individual to prevent the merger of country and pop music when in 1965 he made a "Pledge to Country Music."

I shall sing no song that is not a country song.
I shall make no record that is not a country record.
I refuse to be known as anything but a country singer.
I am proud to be associated with country music.
Country music and country music fans have made me what I am today
And I shall not forget it.

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This, along with a growing appreciation of the purity of genuine country music and the "urban folk revival," spurred many to retain the traditional country style.

Malone points out that country music now depicts urban problems, not rural ones. The common working people — the truck drivers, the factory workers, etc. — constitute the modern folk. Yet country songs still reflect traditional folk themes. Songs about "death, religion, suffering, rejection . . . [strengthen] country music's role as the music of the common man."

STUDENTS OF Southern history as well as country music fans will find the book a valuable addition to their library. It is based on extensive research including personal interviews with many top country music artists. The bibliography and discography alone make the book a desirable purchase. References to more than 500 songs are supplemented with footnotes that tell the reader exactly where he can find recordings. Each source is cited so that those who care to can undertake further inquiry. There is a 16-page collection of rare photographs of many of the early country musicians which provides additional color to the book.

Although this is certainly more than a simple pioneer study, Malone freely admits that many other areas warrant investigation. Far too many historians state that their study is exhaustive and complete. Happily, Malone is above such pomposity. He frequently states in a footnote what has been done, specifies the residence of unused materials, and suggests areas of development. Such honesty is more than unusual and refreshing, but certainly helpful as well.

Another characteristic that distinguishes Malone as a historian and writer is his quite noticeable attempt to be objective. When he differs from other informed sources, he is careful to make this admission and frequently amplifies upon the other opinion in a footnote. When examining the book, one quickly acquires the feeling that Malone has an encompassing grasp of the subject, and this usually tends to persuade the reader that Malone is most likely correct.

If there is anything disparaging to be said about the book, it relates to the somewhat extraneous attention devoted to the various early radio stations which, through broadcasting, helped popularize country music. Certainly the radio industry had a profound influence in creating an ever expanding interest in country music, but some may believe the point could have been meaningfully conveyed in less space. The same critics may insist that the book is too detailed in other areas as well. However, Malone intentionally emphasized the significance of the commercialization of country music to explain the American success story that country music has developed into today.

Added up, it is clear that *Country Music, U.S.A.* is the most professional and prodigious study undertaken to date. It certainly merits the attention of all interested fans of country music and all serious students of Southern history.

WAYNE OAKES

The writer, a student of and frequent performer of country music, particularly that of Jimmie Rodgers, is an Austin resident. He and Bill Malone have known each other for several years.

Observations

Capital Gossip

Washington, D.C.

In always political Washington, speculation among the Texans about Sen. Ralph Yarborough's 1970 opponents turns mostly to Lt. Gov. Ben Barnes for the Democratic primary and Cong. George Bush of Houston in the general election.

Yarborough is now maintaining a punishing schedule of weekend speechifying in Texas. For instance, the long weekend May 23-26 he made commencement addresses in Cisco and Tyler, dedicated a bath house in Marlin, addressed the postal clerks in Greenville, and addressed a joint session of the Legislature. Some people are telling him Barnes is saying he will run, while others tell him the contrary, but Yarborough is maintaining the position that he's not worried about that one way or the other — he's "laying in hay for a long winter."

Barnes came to Washington earlier this spring and testified before the House Ways

and Means Committee on behalf of the oil depletion allowance. Reporters observed Barnes and Bush, a member of this committee, chatting amiably, and subsequently reports reached Bush that Barnes was saying that Bush had told him that he would not run for the Senate if Barnes did. Bush explains that all that passed between them was a friendly exchange of hope that they wouldn't wind up running against each other.

"I am certainly considering this race," Bush says, "and my decision is going to be based on other than who is running. Barnes would be a formidable opponent, and I've already found out that Yarborough's a formidable opponent. But any report that I would step aside if Barnes ran is absolutely without foundation. I further doubt that Governor Barnes has said this."

The establishment Democrats who are organized more or less around former Gov. John Connally have settled on Barnes as

the best they've got in the way of well-groomed leadership material, whether they like everything Barnes has done lately or not. Barnes also has tended his openings to the left with a care reminiscent of that practiced by Lyndon Johnson. But he has not yet been put to the test of a tough statewide race against a well-known opponent.

He has three principal options: run for the Senate against Yarborough in 1970, for the Senate nomination against Tower in 1972, or for governor (either against Preston Smith in 1970 or else, perhaps not against Smith, in 1972). If he ran against Yarborough he would sustain the political wounds of a hard campaign and the abiding hostility of the liberal and loyal Democrats who identify with Yarborough. Even if Barnes won the nomination, he might lose the election as a result of liberals' preferences, in such circumstances, for someone such as Bush.

Bush likes the life in Washington; that is probably the main reason he did not run for governor, and it gives him pause about running for the Senate again. He would like to be senator, but if he lost he'd be out. Yarborough has a large, loyal following, the chairmanship of the Senate Labor Committee, and a powerful place on the House Appropriations Committee. Beyond that, Bush again has to consider the way old-line Texas Democrats would feel about the prospect of being represented by two Republican senators.

Oil Depletion

Chairman Wilbur Mills of the House Ways and Means Committee says oil depletion will be cut and the use of oil "production payments" as techniques of tax avoidance will be ended. Oil-state congressmen, including those from Texas, are bracing for an attempt to send the tax bill back to Mills' committee with instructions to restore depletion to the full present rate if the House has not already done so, and a Senate floor fight is inevitable.

Meanwhile, Sen. Philip Hart's subcommittee on antitrust and monopoly has been giving the major oil companies the bends on tax policy, the oil import program, and prorationing. Texas Railroad Commissioner Jim Langdon, testifying on the industry side, vigorously upheld proration, of course. M. A. Wright, president of Humble (Jersey Standard's wholly-owned domestic operating company), admitted, in testimony before Hart, Sen. Edward Kennedy, and other committee members, that Jersey expects oil imports to double as a proportion of U.S. consumption by 1985. (They are 14% now; by 1985, Wright says, they'll be 24%). This was bound to bring the Texas independents out fighting.

Hart's subcommittee is well aware of its central purpose — to lower oil and gas prices and increase oil and gas taxes. The importation of cheap foreign crude into New England is only an aspect of this

overall purpose. Therefore, the subcommittee might wind up making book with the Texas independents. For instance, the independents would not be nearly so hostile toward cheap foreign oil if they, themselves, could get a chance at some of it. Except for "historical importers," to get the oil import tickets now you have to have a refinery.

\$5,000 Is Over \$2.50

The national AFL-CIO brass and many others assembled in Washington at the Shoreham one recent night to honor Paul Douglas, the senator from Illinois and leader of the progressive bloc from 1949 to 1967. Labor presented Douglas the Phillip Murray-William Green Award and a check for \$5,000. Douglas graciously accepted the honor and returned the money.

George Meany, president of the AFL-

CIO, made a speech commending Douglas and was positioned beside him on the dais. Making the presentation, Joseph A. Beirne, president of the Communication Workers of America, recalled that on COPE's scorecard, Douglas had voted "right" 76-0. In fighting for "causes that were years away from winning," Beirne said, Douglas has been "a man ahead of his times, living in our times."

Douglas said he realized his name was being used as a symbol of many who had fought the good fight, including his wife, his staff, and the progressive bloc in the Senate. Accordingly, he said, he had decided to return the \$5,000. He asked labor to give it to four good causes which he specified. About half the crowd stood and applauded as he returned the check to Beirne.

While he was a senator Douglas put a limit of two dollars and fifty cents on the value of gifts he would accept. R.D.

In My Opinion

No Small Talent

Austin

Odessa attorney Warren Burnett is the subject of a long article in the current *Harper's* magazine, written by Larry L. King, the *Harper's* and *Observer* contributor. Burnett is probably one of the more impressive and effective of the young lawyers in the state these days and perhaps will one day contend for the mantle of Houston's Percy Foreman as Texas' leading trial and criminal lawyer.

Foreman has very definite ideas about the rights of the accused, the quality of justice before the bar, and related concerns. Burnett has all these, but more, I think, he is more inclined than Foreman to worry about broader social concerns — social justice. I saw this in Del Rio this spring when Burnett, having driven the long distance from his home, successfully defended more than 30 members of the Mexican-American Youth Organization who had been charged with parading without a permit. That day in Del Rio Burnett exhibited the concern he feels for what he perceives as social wrongs and the inequalities that Texas visits upon its dispossessed. He clearly had prepared himself with awesome thoroughness, to the extent that the corporation court judge twice that day had

to interrupt the proceedings to read the text of cases which Burnett had referred to.

King, in the July 21, 1967 *Observer*, recounted how Burnett won a reversal of a murder conviction before the U.S. Supreme Court while serving as a court-appointed lawyer for a black man.

I believe Larry was quite correct when he writes in the *Harper's* article, of Burnett, "I mused that my old friend was something of an American rarity: an uncommon mammal who, though aging and prospering, grew more rather than less of a social conscience. One thought of many persons or institutions gone galloping in the other direction: Hubert Humphrey; the fat-and-happy American labor movement; the Irish and the Italian and the Jew who having attained a certain assimilation now begrudge the black man his own tardy rise; the nameless freshman Congressmen who came to Washington seeing young men's visions but who grew old and powerful and came to wish for little more than that

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tomorrow could be more like yesterday. No, growing was no small talent."

Chicago's Press

If you are among those who still are concerned and troubled about Chicago last summer, the Democratic convention, may I commend to your attention a thoughtful and carefully documented study of the Chicago press' reporting during that awful week? Nathan B. Blumberg, a professor of journalism at the University of Montana, was in the streets of Chicago those several days. What he saw on the streets and what he saw in the Chicago papers are the particular object of his study — as are the broader implications of contemporary U.S. journalism and the status of today's American society.

Copies of his article ("The 'Orthodox' Media Under Fire: Chicago and the Press") are available, at no cost, I believe, from the University of Montana, School of Journalism, Missoula, Montana 59801.

Humble Citizens

A "Harris County Voters Information Handbook" prepared for Houston area employees of Humble Oil recently has come to my attention. In the introduction it is stated that "Humble's public affairs policy . . . encourages employees to practice full citizenship." The policy, as expressed in formal action by the company's board of directors, includes the following passage: "... Campaigning for public office and the holding of such office by employees are also recognized as being a

part of their rights as citizens, although there may be instances when the position of the company and the individual

employee with relation to particular office is such that the exercise of these rights might not be advisable." G.O.

Dialogue

Sex in Austin

I just read Lee Clark's article [*Obs.*, June 20] on Texas legislators, and their alleged sexual activities in a somewhat collegiate atmosphere with playgirls playing house in Austin during the session. As a would-be legislator myself, I am shocked and dismayed on three counts.

1. This article can only make a tough competitive situation worse in Dallas County as far as getting into the Legislature is concerned.

2. Some of the more able but senior legislators will probably now find strong opponents among their hot-blooded constituents. The orderly governmental process can only suffer.

3. This article may well result in a batch of new faces bearing disappointed looks in the next Legislature.

I can only hope that the limited circulation of the *Observer* keeps the inbound traffic congestion to Austin to a minimum. Further, I hope that the *Observer* in the future will refrain from printing such obvious commercial propaganda of the Austin motel, apartment, and liquor interests. It is most disappointing to see this sort of switch by a journal that until now has led the good fight against fraudulent trade-school advertising.

Bill Stehr, 2809 Reagan St., Dallas, Tex. 75219.

Rebuttal from Dallas

With regard to Lee Clark's article "Every Legislator's Wife is a Virgin" (besides re-examining my views on the subject of parthenogenesis) I wish to take umbrage at the criticism of the legislator (obviously my husband) who, after having his progeny dispatched to Austin by his spouse, left them in the care of his secretary. I must emphatically state that my husband's secretary takes excellent care of the children and, further, that they are abidingly fond of her. Mrs. Clark's article has probably caused irreparable harm to a very advantageous babysitting situation . . .

An Incensed Legislator's Wife.

Normally the Observer does not print unsigned letters. We make an exception in this case. This letter was postmarked Dallas.—Ed.

America the Beautiful

Every June 6 I get an eyeful of patriotic editorializing in the dailies concerning the heroic efforts of American troops "who drove a wedge into the mighty fortress of German-occupied Europe." The troops are

portrayed as 20th century knights who charged ashore for Gawd, mamma, and free enterprise.

When I look back, I see a 19-year-old infantry sergeant who after two years of college was pressed into service, indoctrinated, and trained to be a killer for democracy. I see the great armada. I see the troops that overran Europe in the ensuing eleven months, and I remember the time when the orders were given and carried out — "Take no prisoners." Too, I see my men shooting and thrusting bayonets into the bellies of fair-haired young Germans, who pled for their lives. We were the heroes who won the day! Were we not fortunate to have had military leaders who trained us in all the skills of Attila the Hun!

Are not Americans thankful that we have continued such military efficiency so that our sons can kill in Vietnam with the effectiveness that we gallant knights displayed in World War II?

Today's papers are filled with glad tidings of ABM systems, blood, generals, nuclear warships, hawks, and bombs given to us by the Almighty to preserve the good things of life and our wonderful way of life. I can hardly continue as tears well up in my eyes while I count my many blessings on this 6th of June, so I leave you with that memorable Army Air Force cry of WW II — "Bombs away!" until next June 6.

Dr. Louis E. Buck, D.V.M., 3116 Wheeler St., Austin, Tex. 78705.

A Second-Hand War

Sen. Edward Kennedy really tightened the screws on the G.O.P. and President Nixon with his wonderful speech on the stupid slaughter of our men on Hamburger Hill. Thank God that Edward Kennedy is speaking out.

Some say that this horror in Vietnam will soon be called "Nixon's war." Some say President Nixon inherited this war from L.B.J. I am prompted to ask this question: "Would you buy a second hand war from Nixon?" Some will buy a second hand war from this man but, again, millions of Americans will not buy it.

Nell Herrin, 7146 Timber Ridge, San Antonio, Tex. 78227.

Dave Hickey, Inc.

If Dave Hickey decides to incorporate, I want a piece of the action. OK, he's not perfect, but he sure knows the language and the lay of the land.

J. D. Frazee, 5409 Darlington Lane, Austin, Tex., 78723.

TEXAS' WELFARE CRISIS

AUSTIN.—The Texas welfare system is teetering on the brink—and if Amendment No. 5, which would raise the maximum on welfare payments from the state treasury from \$60 to \$80 million, is defeated—the system will fall into very troubled waters. Aid to families with dependent children (AFDC), 10% of welfare expenditures in Texas, is the sore spot of the system. Because of a cut in May in AFDC, setting aid at \$12.50 monthly per child, a federal court has issued an injunction against the state, asserting that if improvement is not made shortly (60 days was set as the deadline), all federal AFDC funds would be cut off. Since the federal government pays 81% of the state's AFDC of the money, such a cutoff on Washington money would be disastrous. Indeed, it could mean the termination of the AFDC program in Texas, since a provision of the state Constitution precludes payment of state funds for welfare unless there is federal participation. The only way to circumvent this termination would be for the Legislature to readjust and reduce the old age, blind, and disabled divisions in order to bring the AFDC up to a federally satisfactory level. Since the 60-day deadline is near, and the reductions would be politically and economically unfeasible, it is unlikely that these readjustments will salvage the AFDC program if amendment 5 fails.

Texas long has ranked very low among the states in aid to persons on the welfare rolls. The modest program has become even more modest since last November, when increasing the Constitutional ceiling from \$60 million to \$75 million was refused by voters. Many State Welfare Dept. officials believe the proposal was turned down out of an emotional desire not to "encourage illegitimacy." Welfare Cmsr. Burton Hackney has countered that "having children could hardly be profitable at \$12.50 per month." Further, he and other Welfare Dept. officials add, AFDC is but 10% of the state welfare program; the other categories—old age assistance, aid to the blind, and aid to the permanently and totally disabled—make up the bulk by far, of welfare payments in Texas. Hackney says that if the welfare ceiling is not raised by voters on Aug. 5, not only will AFDC be cut, but all welfare payments will be sliced further.

The state welfare program is feeling the pinch at both extremes. The ceiling on payments is compounded by the rapid growth of welfare-eligible persons, due to increases in the state population, a liberalized redefining of what constitutes permanent and total disability, and a federal court decision killing Texas' residency requirement of one year. The AFDC rolls alone in Texas grow at the rate of 3,000 a month. The squeeze on welfare funds meant, last May, that 22,000 families received reduced payments, and 2,700 more were completely cut off.

Inevitably, the squeeze on welfare funds means that dependent children are the ones who are deprived. Legislators are reluctant to cut old age assistance, aid to the disabled or blind because many of those recipients vote, while mothers of dependent children generally do not vote. However, mothers of dependent children are showing somewhat more political interest lately than in the past, for example conducting demonstrations. The effect of this so far has been, mostly, to further alienate the Legislature.

Texas has 132,000 dependent children on its welfare rolls, 229,000 old age pensioners (who receive an average of \$59 monthly), nearly 10,000 permanently and totally disabled (\$60 monthly), and some 4,000 blind (\$71 a month). What will happen to these people if the amendment is not passed is the question. The proposed increase in the welfare ceiling last fall carried in only 16 of the state's 254 counties. But perhaps prospects are a bit better than before due to the interest several of the state's leading newspapers (including both Dallas dailies) and television stations have shown in dramatizing the problem. With passage of Amendment No. 5 Texas would net \$41 million in new federal welfare money annually, AFDC would be tripled to \$18 million a year, aid to the disabled and old age pensions each would be increased by \$2 million annually.

Senator MONDALE. Our other witness this morning is James D. Lorenz, of the California Rural Legal Assistance program.

Mr. Lorenz, we are glad to have you here. We have heard many, many compliments about your program.

STATEMENT OF JAMES D. LORENZ, ASSOCIATE DIRECTOR, CALIFORNIA RURAL LEGAL ASSISTANCE PROGRAM, LOS ANGELES, CALIF.

Mr. LORENZ. Thank you, sir. We have about a half hour before your executive session. I have submitted a written statement.

Senator MONDALE. We will include your statement as though read in the record and you may proceed as you wish.

(The statement follows:)

PREPARED STATEMENT OF JAMES D. LORENZ, JR., CALIFORNIA RURAL LEGAL ASSISTANCE

My name is Jim Lorenz. I am a member of the State Bar of California, am employed by California Rural Legal Assistance, a legal services program funded by the Office of Economic Opportunity, and I provide legal representation to farm workers residing in various areas of California.

Many of my clients feel that the law and the legal process will not help them, will not protect them, even though their legal rights have been clearly violated. "I never hear about law and order when my rights have been violated," a client said to me the other day. "If my disabled sister makes a mistake on her welfare application, gets cut off and then complains about it, she may get prosecuted by the district attorney for welfare fraud. But if she tells him about being swindled by a travelling freezer salesman, he will tell her that he doesn't have enough time to take these consumer fraud cases."

"I heard the Attorney General talk about law and order with justice the other night," another man said to me. "You know, I have even given up hoping for the justice part. I would just like a little law and order on my side for a change."

Are these people talking nonsense? From my experience, I would have to say that they are not. Despite the work of many objective, honest, and committed lawyers, law enforcement officials, and judges, there is still a double standard in rural California about who gets law enforcement, against whom, on what basis. By September of this year, attorneys for California Rural Legal Assistance hope to document this thesis in a report entitled "Law and Order in Rural California." Today, I would like to discuss just ten instances where legal protections for poor people have broken down, in whole or in part, or is threatened. (Because some of the following cases are now being investigated, names of persons and places involved have been deleted.)

Case No. 1

A man who has been arrested for shooting off fire works in a small town in a small county in the San Joaquin Valley goes to a private attorney for advice. Previously jailed for voluntary manslaughter, the man is concerned that, even though the present offense is a minor one, he will have the book thrown at him because of his prior record. After listening to his story, the attorney agrees to take the case for a substantial retainer and a cash deposit. A few days before the defendant is to go to trial, the attorney informs him that he cannot represent him. After the defendant pleads with the attorney to remain in the case, the attorney finally agrees to remain in the case if his fee is substantially increased. The trial date is set over. Several days before the second trial date arrives, the attorney again informs the client that he is stepping out of the case. The same sort of anguished discussion ensues and again the attorney relents, agreeing to take the case, but this time, in addition to the fees already agreed to, he requests, and secures, a mortgage of the man's house. Despite the generous fees which are provided for, the attorney ends up losing the case anyway, his client goes to jail, and when the client gets out, the attorney seeks to foreclose on the house.

Case No. 2.

At a monthly luncheon meeting of one rural county bar association in California, a Superior Court Judge stands up, addresses the Assembly and attorneys and guests, and during the course of his remarks, thanks the local attorneys for not having availed themselves of the rights provided criminal defendants in a case called *In Re Smiley*, even though they could have done so. [*In Re*

Smiley, 58 Cal. Rptr. 579 (1967), provides that where the record is silent as to whether a defendant has been advised of his right to appointed counsel or has waived his right, he is deemed to have suffered a denial of his constitutional rights.] When the judge adds that the appellate courts have gone crazy in extending the rights of criminals, (even though under our legal system, he is bound by law to respect and follow their rulings) some of the attorneys present may resolve not to make "unnecessary" work for the judge, even though they are under a professional duty to fully represent their clients' interests. And then, possibly, the judge may be more favorably disposed toward them in other cases.

While I am not suggesting that the judge would reach a different conclusion in such cases, there are many other ways he can be favorably disposed to "lawyers who are cooperative," by speaking to counsel in a friendly voice in a jury trial or by not holding counsel to the requirement that he submit a memorandum of points and authorities along with his petition for preliminary injunction, and so forth. In this county, you might say, the bench and the bar operate as some kind of club, and although the judicial machinery runs more smoothly, the rights of criminal defendants may be compromised.

Case No. 3.

In a town of 3,000 in the San Joaquin Valley lives a justice court judge who is a close relative of the local chief of police and one of the major owners and managers of a local collection agency and loan business. While the judge is careful to see that no collection matters involving his agency come before his court, many of the debtors doing business with this collection agency come before his court on other matters. Can we suppose that the judicial process appears as a neutral, impartial presence in this small community? The judge's collection agency, we are told, has a high rate of successful collections, and is doing a lucrative business.

Case No. 4.

Directly to the south, in another county, the county welfare department sent out a directive providing that welfare recipients would be cut off welfare unless all children in their families 10 years of age or older reported to work. It is true that federal and state child labor law provide that no child under 12 can work—requirements invalidating the department's directive, but nonetheless, the order was enforced and some 15 families were cut off welfare when their small children failed to report for work. After some pressure was brought on the welfare department by our local attorney and a law suit was filed by us, the welfare benefits were restored. It was just a misunderstanding, the welfare department said. And yet, we and our clients are often told, "ignorance of the law is no excuse." Especially the child labor law, which virtually everyone knows forbids children under 12 from working. . . . Especially ignorance by public officials. . . . Five months later in another welfare dispute in the same county, the local district attorney prosecuted a female welfare recipient for welfare fraud. His reply, in part, to her argument that she didn't realize that she was putting down figures which were incorrect, was: "Ignorance is no excuse."

Case No. 6.

In a wealthy agricultural county adjoining the Sacramento Valley, where law and order is regularly discussed in the newspapers, one of the county's largest farmers is notorious for repeatedly hiring illegal aliens. Two weeks ago, the Border Patrol apprehended nine illegal aliens who were on the grower's property, after we requested the Border Patrol to do so. Before they were deported, the illegal aliens told us that they had informed the grower at the beginning of their employment of their illegal status. During the fiscal year 1968, 151,705 illegal aliens were apprehended in the United States by the Immigration and Naturalization Service. For every illegal alien apprehended, at least two go undetected, officials of the Department of Labor have estimated. Thus, in any given year, there are approximately 450,000 wetbacks working primarily in American agriculture, constituting approximately 20 percent of the primary agricultural work force. Of the illegal aliens who our investigators have been able to interview, at least 40 percent state that they are working for employers who know they are illegal aliens. Federal law specifically exempts employers from prosecution for hiring illegal aliens, although the illegal aliens themselves are subject to prosecution. However, the federal exemption deals only with the mere employment of illegal aliens, and not with the transporting, feeding, and housing of illegal aliens

by employers—services which were provided by the employer of the nine aliens who were apprehended. Nonetheless, federal prosecutors have persistently failed to prosecute in such areas because, one has argued, such cases fall into a “gray area” of the law. One federal prosecutor has also admitted to a reporter of a California newspaper that such prosecutions would be politically unwise: there are just too many wetbacks hired by too many employers, he said. While care in launching prosecutions is to be commended, we feel that there is a solid basis for federal prosecutors to commence action against employers who knowingly hire and harbor illegal aliens. We doubt whether these same prosecutors would indicate a similar diffidence in prosecution, were students, black or Mexican-American activists involved in such a comprehensive breakdown of law and order.

Case No. 7.

In 1968 and 1969, CRLA attorneys and investigators uncovered more than 5,300 instances where California agricultural employers were in substantial and continuing violation of health and sanitation requirements. Under California law, all of these employers are committing criminal misdemeanors. Nonetheless, in the three counties where violations were most rampant, criminal prosecution of such violators were almost unheard of; very few investigations were even conducted by public agencies; and where violations were found, local public health officials usually sought compliance by conducting “educational campaigns” in which they urged the growers to do better by their workers. As one of our clients commented, “The employers get educational campaigns when they break the law, but their employees get prosecuted when they are in violation.” It is our experience that such educational campaigns had very little effect. Only after we had filed a number of civil complaints against these growers, had attempted to cut off all labor referrals to them from the Farm Labor Service, and had filed a series of written complaints against the public agencies themselves, did local law enforcement efforts become more extensive. One state investigator told us: “If you guys weren’t putting pressure on us, we wouldn’t be out here investigating all of these violations.” And if we cease to apply pressure, he and other officials indicate, many of the enforcement efforts would peter out.

Case No. 8.

A significant number of employers whom we found to be in violation of health and sanitation laws are now receiving agricultural subsidies from the U.S. Department of Agriculture.

Case No. 9.

Twice, in the last two weeks, a number of farm workers have been sprayed by crop dusters while they were working in the fields of a strawberry grower. Their employer does not make a practice of telling his workers what he sprays his field with, nor does he take various safety precautions to insure that they will not be subjected to such accidents, as he is required to do by various provisions of the California Labor Code. Moreover, when informed of such accidents, the State Department of Agriculture and the local Agricultural Commissioner have refused to release information as to what pesticides and fertilizers the grower has been using, even though such refusals are in violation of California’s Freedom of Information Act. Not knowing what they have been sprayed with, the farm workers are unable to secure proper medication from local doctors; for, as several leading medical experts have recently testified, doctors cannot provide adequate treatment for pesticide injury when they do not know what the ailing worker has been sprayed with. The result? An average of two farm workers die each year from pesticide poisoning in California, and the agricultural industry in California has an occupational disease rate which is 50 percent higher than that of the next highest industry, and almost three times as high as the average disease rate of all industries. A significant number of these fatalities and injuries have occurred, medical experts say, because of the lack of safety precautions by employers (even those such precautions are required by law) and because of the general lack of information about pesticides (even though the State Department of Agriculture is required to release such information). Violations of the law can be costly.

Case No. 10.

In almost all of the instances cited above, we have filed some sort of legal action on behalf of California farm workers. Largely because of our efforts to attack these recurrent violations of the law, I believe, we are said to be “harass-

ing local farmers," according to certain powerful interest groups in California, and last week, one public official described us as "a bunch of beatniks" and "a force for social revolution," while calling on OEO to cut off our funds. The message is clear: If you are a legal aid agency in a large urban area, with a substantial black population, you will probably be able to vigorously represent your clients without endangering your federal funding; but if you are a legal aid agency in a rural area, where the poor are less organized, and where few powerful interest groups are involved, you may be cut off. Whether or not South Florida Migrant Legal Services is refunded—and this is still an open question—its staff has been decimated because of delays in funding, delays which have occurred because of attacks on that program. Will the same thing happen to us? We trust that it will not, that is if "law and order with justice" has any meaning in 1969.

What lessons can we draw from these ten cases? I wish we could conclude that simply by providing tougher criminal laws, Congress will ensure that the rights of the rural poor will be better upheld. But how can we reach this conclusion when laws now on the books are not adequately enforced on behalf of the poor?

Nor can I say that money for more law enforcement officials would be helpful to our clients when many of those officials fail to show commitment to law and order *for* the poor, as well as *against* the poor.

Legal representation for the rural poor, from organizations like South Florida Migrant Legal Services and California Rural Legal Assistance, can prove helpful, in bringing pressure to bear on illegal employers and recalcitrant public officials; but we too are limited in what we can do. We can reach but a small percentage of the rural poor, probably less than 5 percent; and besides, even when we do represent a client, our bargaining power is often dependent on his.

We know, from three years of experience, that the law is, in some sense, a service, like any other service. The quantity and quality of service that is provided to people is dependent upon what they can demand. In order to demand effective service from our judicial system, they must have power, power to demand of employers that they respect health and safety laws and rules forbidding the hiring of illegal aliens; power to demand of public officials that they will prosecute employers importing wetbacks, that they will release information pertaining to dangerous pesticides, and that they will diligently enforce the field sanitation laws; and power to demand of attorneys that they will fairly and fully represent the rights of the clients.

Without such power, we will experience more of what we have now, where powerlessness breeds injustice, weakness invites others to violate the law, and people who are victims are continually victimized.

In order for the rural poor to achieve some modicum of power and justice in this society, they need lawyers and laws, to be sure, but they need far more than this. They need steady jobs, which are protected from the threats of automation and foreign competition. They need money to buy farms and houses and machinery. And they need the right to organize themselves into effective corrective bargaining units. Congress can provide these benefits, which constitute the sinews of power and the foundation of justice. But will Congress do so? Will Congress do more than hold hearings? The question rests with you.

[From the Los Angeles (Calif.) Times, July 4, 1969]

UNSANITARY CONDITIONS CITED—COURT UPHOLDS JOBLESS MAN'S RIGHT TO REFUSE FARM WORK

(By Harry Bernstein)

Superior Judge Irving Perluss ruled Thursday that a jobless worker was within his rights when he refused to accept farm labor work on grounds that most of such jobs are in violation of state health and sanitation laws.

The court ruled that Mauricio Munoz, 31, of Salinas, is entitled to unemployment benefits even though he refused to accept a farm job offered him through the California Department of Employment.

The precedent-setting case held that the state agency has the primary responsibility for making sure that farm jobs are in compliance with health and sanitation laws before requiring jobless workers to apply for such jobs.

The unusual legal action was brought by California Rural Legal Assistance, a federally financed legal aid agency.

Robert Gnaizda, CRLA counsel said "if the court decision is not appealed or is upheld as expected, it will mean the Department of Employment will have to simply certify that farm jobs do have one toilet for every 40 workers, for instance, sanitary drinking facilities, and in other ways comply with the law."

A spokesman for the Department of Employment said no decision has been made on whether to appeal Judge Perluss' ruling but that it could impose a serious problem of enforcement if the ruling is allowed to stand.

Munoz, an insurance salesman, was referred for work at Salinas Strawberry Co., Inc., when he lost his insurance job.

When he turned down the referral, the state rejected his request for unemployment benefits because workers have to accept "suitable employment" to qualify for jobless pay.

Munoz, a former paratrooper and Korean war veteran, went to CRLA for help and the test case was filed.

SURVEY OF FARMS

CRLA gathered statistics alleging that more than 90% of California farm jobs violated state health and sanitation laws.

The legal aid group made a survey of 107 farms in the Salinas area and found 1,869 violations ranging from lack of toilets to one drinking cup for entire crews of workers.

Judge Perluss said that in industrial and business jobs, "actual participation through trial and experience" by a worker is used to determine whether the jobs are in compliance with state health and sanitation laws.

But this presumption cannot apply in agriculture, he said, because of the alleged widespread violations of the law and the long distances a worker must go from the job placement office to a farm to check on job suitability.

Therefore, he said, because the state agency has more easily obtainable information about such work, the agency rather than the individual should make sure that the jobs comply with state laws before the individuals are sent out for such work from state employment offices.

Munoz, who is married and has three children, is now employed by the Salinas School District as a counselor.

[From the Los Angeles Times, July 31, 1969]

FARMWORKER CANNOT BE FIRED FOR UNION ACTIVITY, COURT RULES—PRECEDENT-SETTING APPELLATE DECISION HANDED DOWN IN CASE IN WHICH NINE BROUGHT SUIT AGAINST SALINAS GROWERS

(By Harry Bernstein)

California farm workers cannot be fired for union activity, the State Court of Appeal ruled in a precedent-setting decision Wednesday.

Farm workers are now excluded from federal labor laws which, among other things, prohibits employers from discharging workers who form or join unions.

Cesar Chavez' AFL-CIO United Farm Workers Organizing Committee contends that one major obstacle to organizing farm workers is their fear of being fired if they join him or his organization.

Growers deny this but in August, 1967, nine farm workers brought suit against a group of Salinas area growers through California Rural Legal Assistance, contending they were fired for union activity.

CRLA said the alleged discharges were illegal under a section of the state's labor code which, in general terms, declares it is the policy of California to encourage collective bargaining.

The men sought not only reinstatement, but damages from the growers involved.

If this is not overruled by the Supreme Court on a further appeal, CRLA notes that for the first time California farm workers will have protection against discharge for union activities, just as nonfarm workers have under federal law.

CRLA counsel Robert Gnaizda said, "It also will mean that California farm workers will have even greater protection because if they are fired, not only will they get reinstatement but they can sue the growers for damages.

"The means the California Labor Code will actually afford more protection

to the farm workers than if they were covered by the federal labor law," Gnaizda said.

The case involves the Growers Farm Labor Assn., the Grower-Shipper Vegetable Assn., and Martin Produce Co.

Martin entered into a settlement agreement which was itself unprecedented.

The company agreed to guarantee lifetime employment to the workers involved in the case at the Martin farm subject only to "discharge for good cause; a guarantee of \$4,500 a year annual minimum wage, and punitive damages of \$6,750."

But the cases against the grower associations were not dropped, and it was on these cases that the Court of Appeal ruled Wednesday.

The case now goes back to a lower court to decide whether the workers discharged were actually fired for union activity.

[From the Los Angeles Times, July 23, 1969]

COURT OPENS DOOR FOR CHALLENGE ON EMPLOYING OF ILLEGAL ALIENS

(By Harry Bernstein)

Unprecedented legal action has been started to punish growers who use Mexican aliens as farm workers.

The California Court of Appeal ruled Tuesday in Sacramento that attorneys for California Rural Legal Assistance (CRLA) may take statements from illegal aliens to show whether growers knowingly hired them.

And the court also said the unusual legal procedure invoked by CRLA is "at least an open question" which could end up in forcing growers who use the aliens to pay damages and fines.

At present, when growers or other employers are found using illegal aliens, the aliens are deported but there is no further action.

The CRLA, however, has decided to seek action against the growers in such cases by invoking California's civil code which prohibits "unfair competition" by businessmen.

CRLA contends that it is "unfair competition" for a U.S. farm worker when he applies for a job where an illegal alien (or wetback, as those from Mexico are called) is employed.

A decade ago, hundreds of thousands of Mexicans crossed the Rio Grande along the Texas-Mexico border every year to work on U.S. farms throughout the Southwest, while hundreds of thousands more crossed at other border points, including the California-Mexico line.

This source of labor was sharply curtailed when the United States agreed to set up a legal Mexican farm labor import program which, in 1964, brought in about 100,000 Mexicans for farm jobs in California alone.

That program, however, was killed in 1964, and since then growers have relied on U.S. workers, along with some so-called "green carders" who are Mexicans with U.S. work permits, and on the illegal aliens.

Last year, the Department of Immigration's border patrols caught 151,705 illegal aliens, but it is estimated that for every one caught in this country, at least one goes free.

Robert Gnaizda, assistant counsel for CRLA, said in California alone, 37,945 wetbacks were caught and deported by the border patrol.

"We contend that if the wetbacks were not allowed to work on farms, all jobless farm workers could have been employed, and millions of dollars (would have been) saved in welfare costs which go to unemployed U.S. citizens," said Gnaizda.

In the past, he said, the failure of the government to take any action against growers who use illegal aliens, in effect, encouraged the growers to use the wetbacks.

As a test case, two U.S. farm workers, Pedro Hernandez and Julio Martinez Alvarado, "have brought a class action suit on behalf of all American farm workers against Zukerman Farms, in San Joaquin Valley, where the two men were rejected when they applied for jobs early this month," Gnaizda said.

"At the same time, we allege that Zukerman was knowingly employing wetbacks, nine of whom were caught in border patrol raids July 15," he said.

CRLA is asking for \$20,000 in punitive damages from Zukerman contending that the use of illegal aliens kept CRLA's clients out of work and also depressed their wages and working conditions when they are employed because the Mexican illegal aliens will work for less money than U.S. citizens.

Gene Livingston, CRLA attorney from Modesto, said "The latest ruling from the Court of Appeal means any farm worker in California can bring charges of unfair competition against growers who employ illegal aliens."

Management has denied knowing the Mexican aliens were in this country illegally. Those found on the Zukerman farm, near Stockton, are scheduled to be sent back to Mexico this week.

[From the Nation, New York, N.Y., July 7, 1969]

TO HIM THAT HATH . . .

The National Council on Hunger and Malnutrition in the United States reports that the Department of Defense plans to spend nearly \$4 billion in fiscal 1970 to feed an average of slightly under 3.5 million servicemen. A major part of this sum goes for labor, capital items, etc. For food alone the allowance is \$1.7 billion, which breaks down to about \$500 per person per year. Even allowing for the government's purchasing power this does not seem excessive, but the government has the same advantage in purchasing food for the poor, and under the Nixon Administration's present allocations the poor stand to get only \$77 per person per year.

The ratio of 6.5 to 1 may be regarded as reflecting the solicitude of any prudently managed, normally predatory government for its armed services; but in another, purely civilian, area an even more more atrocious discrimination is practiced. Confronted with statistics on malnutrition in the United States, the average well-meaning citizen comforts himself with the thought that at least the poor kids get a good hot lunch at school. But do they? A story by Gene Blake in the June 4 *Los Angeles Times*, and some nationally collected data, indicate that they don't.

According to a suit brought in federal court in San Francisco by the California Rural Assistance League on behalf of needy children in three counties, the state last year received \$25 million in federal funds and commodities to subsidize an average of about 825,000 lunches daily in participating school districts; but school officials arranged to supply to all the children a lunch worth 55¢ at a reduced price of 35¢. Those who have the 35¢ eat, those who haven't go without. The papers set forth that in one Monterey school district, one out of every two wealthy or middle-class children benefits by the program, but only eleven of the district's 803 needy children receive a free or reduced-price lunch, and three times as many teachers and other adults eat the cut-rate meals.

The National Council on Hunger and Malnutrition estimates that since the National School Lunch program was inaugurated in 1946, more than \$4 billion has gone to help the children of the well-to-do instead of the needy. Of more than \$500 million expended by the U.S. Department of Agriculture last year, it is said that \$375 million, or 75 percent, subsidized the more prosperous children. It looks like yet another case of "to him that hath shall be given," although the author of that sad aphorism may have thought, in his innocence, that the very young might be spared. It would be refreshing if, just once, a program of this sort were operated for the benefit of those for whom it was intended.

[From the Salinas Californian, Salinas, Calif., July 4, 1969]

COURT RULES SALINAS MAN CAN REFUSE JOB BECAUSE OF UNSANITARY CONDITIONS

A Sacramento County Superior Court judge yesterday made a decision which could shake California's farm labor referral system to its foundations and compel statewide upgrading of field sanitation.

Judge Irving Perluss ordered the State Department of Employment to pay two weeks' unemployment benefits to a Salinas man who refused to report to a farm job because he contended farm work in Monterey County is dangerously and consistently unsanitary.

REVERSES DECISION

Judge Perluss, a former director of the State Department of Employment, reversed a decision by the California Unemployment Insurance Appeals Board and issued the peremptory writ of mandate sought by Maurice Munoz Jr., 30, of Salinas.

Munoz, a community counselor for the Salinas Union High School District, had been unsuccessful at the administrative level. His claim for unemployment was denied by the Salinas office of the Employment Department and by Unemployment Insurance Appeals Board referee R. S. Heyer before the board itself ruled last November.

Judge Perluss' ruling makes new law. The Attorney General's office has said it will appeal.

REFUSED TO REPORT

Munoz was referred to work as a foreman for a Salinas Valley strawberry firm on April 25, 1968, by the Salinas farm labor office. But even though temporarily unemployed, he refused to accept the position. The denial of unemployment benefits was based on his refusal, which came before, not after, an inspection of the field to which he was referred.

During the June hearing before Referee Heyer, Munoz rested his refusal squarely on his belief—based on past experience on Monterey County farms—that prevailing field sanitation conditions in the county are so poor that they endanger health.

Munoz also said that had he been assured by the farm labor office that the firm to which he was referred complied fully with all field sanitation laws, he would have reported to work. He didn't get that assurance.

The Employment Department, through the Attorney General's office, said a claimant such as Munoz has a legal obligation to investigate working conditions at a job to which he is referred before turning it down. It was also argued that the Employment Department has neither the investigative nor enforcement authority—or even the obligation—to make certain farm employers comply with state sanitation regulations before referring workers to them.

Judge Perluss conceded that the burden of proving unfit working conditions is usually up to the claimant in an unemployment insurance case. But he said the burden shifts in the case of agriculture.

BURDEN ON STATE

"The burden of going forward and ascertaining the suitability of agricultural employment should rest with the Department of Employment by virtue of the scattered fields of the prospective employer and the allegations of widespread sanitation violations," he said.

Judge Perluss said the State Department of Employment had been violating its own rules.

The decision, on its face, means that the Employment Department will have to be able to certify farm employer compliance with all state sanitation regulations before referring workers to them.

DAY HAUL SHUTDOWN

Theoretically, the decision could shut down operations such as the Salinas farm labor office's day haul on Front Street until the referring agency can learn whether the farm employer to whom it refers workers is in sanitary compliance.

The Attorney General's office may request a stay of execution of Judge Perluss' writ until the appeal process has been exhausted.

California Rural Legal Assistance Attorney Robert L. Gnaizda, who, with colleague Martin R. Glick, represents Munoz, said today that "we won't agree to a stay."

Gnaizda said he believes the decision in the Munoz test case means that "growers will have an incentive to comply with the law. If they don't comply, they can't get workers." In any case, he said, "if everyone knows they have to comply, they will comply."

[From the Los Angeles (Calif.) Times, July 4, 1969]

COURT UPHOLDS JOBLESS MAN'S RIGHT TO REFUSE FARM WORK—UNSANITARY CONDITIONS CITED

(By Harry Bernstein)

Superior Judge Irving Perluss ruled Thursday that a jobless worker was within his rights when he refused to accept farm labor work on grounds that most of such jobs are in violation of state health and sanitation laws.

The court ruled that Mauricio Muñoz, 31, of Salinas, is entitled to unemployment benefits even though he refused to accept a farm job offered him through the California Department of Employment.

The precedent-setting case held that the state agency has the primary responsibility for making sure that farm jobs are in compliance with health and sanitation laws before requiring jobless workers to apply for such jobs.

The unusual legal action was brought by *California Rural Legal Assistance*, a federally financed legal aid agency.

Robert Gnaizda, CRLA counsel, said "if the court decision is not appealed or is upheld as expected, it will mean the Department of Employment will have to simply certify that farm jobs do have one toilet for every 40 workers, for instance, sanitary drinking facilities, and in other ways comply with the law."

A spokesman for the Department of Employment said no decision has been made on whether to appeal Judge Perluss' ruling but that it could impose a serious problem of enforcement if the ruling is allowed to stand.

Munoz, an insurance salesman, was referred for work at Salinas Strawberry Co., Inc., when he lost his insurance job.

When he turned down the referral, the state rejected his request for unemployment benefits because workers have to accept "suitable employment" to qualify for jobless pay.

Munoz, a former paratrooper and Korean war veteran, went to CRLA for help and the test case was filed.

SURVEY OF FARMS

CRLA gathered statistics alleging that more than 90% of California farm jobs violated state health and sanitation laws.

The legal aid group made a survey of 107 farms in the Salinas area and found 1,869 violations ranging from lack of toilets to one drinking cup for entire crews of workers.

Judge Perluss said that in industrial and business jobs, "actual participation through trial and experience" by a worker is used to determine whether the jobs are in compliance with state health and sanitation laws.

But this presumption cannot apply in agriculture, he said, because of the alleged widespread violations of the law and the long distances a worker must go from the job placement office to a farm to check on job suitability.

Therefore, he said, because the state agency has more easily obtainable information about such work, the agency rather than the individual should make sure that the jobs comply with state laws before the individuals are set out for such work from state employment offices.

Munoz, who is married and has three children, is now employed by the Salinas School District as a counselor.

[From the San Francisco Chronicle, San Francisco, Calif., June 14, 1969]

THE TWO-THIRDS RULE FOR SCHOOL BOND ISSUES

YUBA CITY

The State constitutional provision requiring a two-thirds majority for passage of municipal and school district bond issues was challenged here yesterday by three farm-worker families.

In essence, the suit filed against the seven members of the Yuba City Unified School District charged that because of the two-thirds majority requirement for bond issues in California each No vote is given twice the weight of each Yes vote.

Accordingly, contended Ascession Larez and Angie and Nacho Castillo, their vote has been diluted and debased and their constitutional rights violated under the Fourteenth Amendment and the "one man—one vote" rule.

Attorney John Moulds of Marysville, a California Rural Legal Assistance council, said their case arose from the defeat of a \$47 million school bond issue on May 20.

Moulds filed the suit on behalf of the three, contending that as a result of the bond defeat, the children of the petitioners are now receiving a "grossly inadequate" education because of double sessions and school overcrowding.

Then bond issue—which failed by a margin of 57 per cent Yes to 53 per cent No—would have financed new school construction in the district.

The suit asked that a writ of mandate be issued which would require the school board to certify that the school bond issue actually passed.

The petitioners "are entitled to have the bonds certified because to do otherwise would debase and dilute their votes in violation of the Fourteenth Amendment of the Constitution of the United States," the suit said.

A hearing on their petition was set for July.

Attorney Moulds said 96 school bond issues failed in California last year because of the two-thirds majority requirement and that 79 of these would have passed if only a simple majority were required.

Thirty-two states now require a 50.1 per cent majority for the passage of bond issues, he said. Only three other states require such a restrictive majority as California does.

[From the Los Angeles Times, Los Angeles, Calif., May 15, 1969]

56 COUNTIES NOW USE FEDERAL FOOD AID PLAN—BUTTE AND SIERRA ONLY ONES TO TURN DOWN PROGRAM FOR POOR

(By Harry Bernstein)

Federal programs to provide food for the poor have now been accepted in 56 out of 58 California counties, a survey showed Wednesday.

Court suits brought by the federally financed California Rural Legal Assistance spurred 19 counties to accept the food programs in recent weeks in addition to 37 which already had them before the court actions were filed.

This week Orange County joined other previous holdouts such as Riverside and San Bernardino counties in agreeing to use the federal food-help plans for the poor.

But the food assistance was rejected by 3 to 2 votes in both Butte and Sierra counties Tuesday.

COURT CHARGES PUSHED

CRLA attorneys Wednesday were still pushing a contempt of court action against U.S. Agriculture Secretary Clifford M. Hardin because he has not complied with a federal court order aimed at putting the food programs in effect in all California counties.

Robert Gnaizda, CRLA deputy director, said "despite all the talk about supporting law and order Mr. Hardin still has refused to abide by the court order telling him to go ahead with the food plans in those counties where the supervisors have rejected it."

Ironically, even though CRLA will continue to press the contempt case against Hardin, Gnaizda called President Nixon's recent food-for-the-hungry proposals "the most dramatic and specific commitment to end hunger ever proposed by an American President."

SOME EXCLUSIONS SOUGHT

Butte County supervisors, in rejecting the food plans, did agree to look into the possibility of a "limited food-aid program which would exclude single college students and hippies."

Supervisor Jere Reynolds, who made the suggestion, did not define the "hippies" Butte County wants to keep out of the program. Chico State College is in the county.

Butte County, about 50 miles north of Sacramento, has a 100,000 population, and CRLA estimates that a fourth of the entire population would be eligible for federal food help if the programs were in effect there.

Butte now has an unemployment rate of 11%, and last winter it jumped to 23%.

Gnaizda said it would cost the county about \$15,000 to administer the federal food programs which county officials have rejected generally because they disapprove of federal interference in local affairs.

But, the CRLA official said, "just 14 growers in Butte last year received \$127,179 in federal farm subsidies for not planting crops with no complaints of federal interference from the supervisors."

SIERRA TAX BASE DEPLETED

Sierra County, the other holdout, said its tax base is depleted because two-thirds of the land is federally owned, and the government pays no taxes to the county.

The Sierra County supervisors did agree, however, to consider putting the program into effect next year. Administrative costs of the program there would be about \$1,000 a year.

While CRLA officials praised Mr. Nixon's proposed food-for-the-poor programs, they called for "important modifications and expansion."

At present, a family of five which needs an estimated \$120 worth of food each month can get food stamps worth \$100 if they put up \$72 in advance, Gnaizda said.

This leaves them short of their basic need, he said, and "Mr. Nixon's proposals would help because he proposed giving them the full \$120 worth of food for \$60. "But even this is too much, and it has to be paid in advance."

[From the Sacramento Bee, Sacramento, Calif., Apr. 24, 1969]

UNRUH PLEADS FOR FARM WORKER UNEMPLOYMENT INSURANCE

Assemblyman Jess Unruh, one of the state's most powerful politicians, harked back to his days as a cotton picker in Texas as he pleaded for approval of his bill bringing an estimated 260,000 farm workers under the state's unemployment insurance program.

He made his plea yesterday afternoon before a subcommittee of the Assembly Finance and Insurance Committee.

The subcommittee took his bill, AB 1204, under submission. This is the same treatment the subcommittee gives all such bills every year. Eventually, it is expected to approve one of the bills—or a combination of the bills.

Last year the full Assembly approved a bill similar to AB 1204, but the legislation died in a Senate committee.

URGES NATIONAL SCOPE

Unruh, former Assembly speaker and a potential Democratic candidate for governor next year, took note of recommendations from farm groups that California should not go it alone in granting unemployment insurance to farm workers because this would cost farmers more money and put them at a competitive disadvantage with farmers in other states.

Farm groups say such legislation should be on a national basis.

Unruh called for California to take the lead in offering the benefit to the farm workers. He was joined by a fellow Los Angeles County Democrat, Assemblyman Bob Moretti, a committee member, who said "California has been first before and I would be proud if we could be first on this."

HAWAII PROGRAM

Moretti said Hawaii has a program of unemployment insurance for farm workers but he called it a "farce—you can only get it at harvest time, when there's work and you don't need it."

The subcommittee chairman, Assemblyman William M. Ketchum, R-San Luis Obispo County, a farmer, said he hopes a bill can be put together by the subcommittee which will be acceptable to farmers, the Teamsters—who are supporting Unruh's bill—and the AFL-CIO, which is supporting a similar bill.

Farm workers from Sacramento and Tulare County spoke in support of Unruh's bill, as did representatives of the California Church Council and California

Rural Legal Assistance, Inc., which has gone to court to try to force the state to offer unemployment insurance to farm workers.

Speaking against it were representatives of California Employers and the California Farm Bureau Federation.

TEAMSTER SPOKESMAN

Tom Harris, representing the Teamsters, said farmers get more money in subsidy payments from the government than farm workers would get in unemployment insurance.

Harris and others also spoke of the savings which would accrue in welfare payments if farm workers could get unemployment insurance. The CRLA estimated the savings could run as high as \$20 million.

Willard Z. Carr Jr., of California Employers, however, contended nearly all of those on welfare are not capable of farm work.

[From the Register-Pajaronian, Watsonville, Calif., Apr. 12, 1969]

ISSUE FOCUSES ON FIELD SANITATION—TOILETS TOO FILTHY TO USE

A suit pending in federal court in Sacramento could make drastic changes in sanitation facilities for farm workers provided by Pajaro Valley's growers.

On April 30, in the court of Judge Gordon D. Schaber, the State Department of Employment must show cause why it should not be prohibited from referring workers to farms which do not maintain proper sanitary conditions.

A suit filed by Mauricio R. Munoz, 31, a former Salinas farm worker and field foreman, triggered the hearing.

Munoz, represented by Robert Gnaizda of the California Rural Legal Assistance, said he had been denied unemployment compensation because he insisted on a guarantee of adequate sanitary facilities before he accepted a farm field job.

The worker's complaint explains he did accept an assignment on a Salinas Valley farm three weeks before he made his demand for proper sanitary facilities.

"That employer turned out to be in flagrant violation of field health and sanitation laws," according to Munoz. "The toilets were too filthy to use. Dogs shared with 60 workers the only faucet providing water."

Munoz said that because of his complaint that employer was cited by the Salinas Health Department, but "the grower continues to use the services of the Department of Employment."

Gnaizda cited figures which asserted Salinas Valley growers last year violated health and sanitation laws in 1,869 instances.

The worker's complaint states, "The (State) Farm Labor Office is fully funded by the U.S. Department of Labor which specifically prohibits the department from referring any farm workers to any grower in violation of any federal, state or local law, including health and sanitation laws."

Munoz said he had been told by the manager of the Salinas Farm Labor Office that in more than 20 years experience he could not recall denying farm workers to any employer "no matter how many worker health violations he committed."

[From the San Francisco Chronicle, San Francisco, Calif., Apr. 5, 1969]

A FIRED TEACHER'S VICTORY IN COURT—JOB RESTORED

(By Michael Harris)

Federal Judge Alfonso I. Zirpoli ordered Gonzales Union High School officials yesterday not to dismiss a young Teacher Corps trainee who helped her students form a chapter of the Mexican-American Youth Association.

Paula Alvarez, who was fired last month, protested that her troubles started when militant students in the rural Monterey county community began showing up in class last November with buttons saying, "Boycott Grapes" and "The Grapes of Wrath Revisited."

The school board promptly passed a resolution banning the wearing of buttons, badges or ribbons "that might be considered inflammatory or indecent in nature."

In her complaint, Mrs. Alvarez said she and her husband, Mario, also ran into

trouble with school authorities when they took students for visits to San Jose State College in an effort to persuade them to continue their educations.

She was told by her superiors, she said, there had been "complaints by several teachers of the changing attitudes of the students who had gone on the trips."

Mrs. Alvarez said she stopped taking potential college students to San Jose State during school hours but made trips on weekends and in off-hours during which 35 Gonzales High School students applied for college.

"I'm afraid you're rocking the boat," Mrs. Alvarez quoted a school authority as telling her.

She complained she was also criticized for encouraging students to participate in skits stressing their pride in their Mexican-American heritage.

The school's enrollment is approximately 70 percent Mexican-American.

Mrs. Alvarez and her husband, who was fired last month from his duties as a school-home liaison representative, are represented by San Francisco Supervisor Robert Gonzales and California Rural Legal Assistance.

They went to court, said Ralph S. Abascal, a California Rural Legal Assistance lawyer in Salinas, only after appeals by students and parents to rehire the couple were rejected by the school board.

In granting a temporary restraining order in Mrs. Alvarez' case, Judge Zirpoli said the school authorities were "restrained . . . from refusing to restore plaintiff Paula Alvarez to her former position as a Teacher Corps intern."

A full hearing on whether to make the order permanent will be held in San Jose on April 15.

School Superintendent Richard G. Force said he didn't know whether Judge Zirpoli's order meant he would have to restore Mrs. Alvarez to her job when school reopens Monday.

"When we went into the Teacher Corps program, we were told a district could request a transfer of an intern at any time without giving any reason whenever we felt it was in the best interests of the school," Force said.

"I feel the people of our district, especially the Mexican-Americans, are behind our trustees."

Force said all five trustees are, as he described them, "Anglos."

Mr. and Mrs. Alvarez are also asking for \$25,000 punitive damages each.

[From the Independent, Long Beach, Calif., Mar. 28, 1969]

TIME TO END "DON'T WORK" WELFARE RULE

No man should be penalized by government for working at an honest job.

Yet Francisco Tarin, a 46-year-old father of 12, is suing federal, state and Santa Clara County officials on a charge that the welfare system does exactly that.

Tarin received \$424 a month in welfare payments when he was out of a job. In February he began to work full time picking mushrooms, earning \$308. Even though that is \$116 less than he would have received for staying at home, he now faces a total cut-off of welfare assistance for himself and family.

The reason is the notorious "Don't Work Rule" which prohibits medical or welfare aid to needy children whose fathers work full-time.

According to the complaint filed by California Rural Legal Assistance and the San Francisco Neighborhood Legal Assistance Foundation, the rule for administering Aid to Families with Dependent Children amounts to "arbitrary and invidious discrimination without any basis in logic or in fact."

We do not presume to pass on the merits of this particular lawsuit, but there is obviously something wrong with a system that rewards job evaders. The argument that public welfare should not guarantee minimum earned income is nonsense. Public welfare should mean as much to hungry children when the head of the household is working as when he is jobless.

Perhaps the ban on supplementary aid will come before the Assembly Committee on Health and Welfare, which has scheduled hearings on welfare reforms. The "Don't Work Rule" is just one of many welfare conflicts and defects which deserve the attention of federal as well as state lawmakers.

[From the Imperial Valley Press, El Centro, Calif., Jan. 1, 1969]

ORLA-IID SUIT TOP '68 STORY—QUAKE, ANIMALS HIGHLIGHT YEAR

(By Jim Cooper)

In the Valley 1968 has left its mark. The day-by-day result of its passing has been reported in the pages of this newspaper; and now that all 366 days have passed (it was a Leap Year) it is only natural that a review be made of the effects of 1968 upon the Valley.

Probably the most important single event transpiring in the Valley in 1968—the event which could conceivably have the most far-reaching effects upon Valley residents—occurred Monday, Nov. 25, when the California Rural Legal Assistance filed suit against the Imperial Irrigation District.

The CRLA's suit listed three causes of action against the district: they claimed that the IID's five electoral divisions were illegally proportioned and that people were not getting equal representation; they claimed that people receiving IID services were being illegally deprived of their voting rights simply because they resided outside of the established electoral divisions; and they claimed that the resulting malapportionment of voters meant that water and power rates benefited large rural landowners, with power rates being considered too high, and water rates too low.

TOP 10 STORIES

The IID has not as yet filed an answer to the suit.

[From the San Francisco Examiner, San Francisco, Calif., Dec. 31, 1968]

U.S. COURT DEMANDS FOOD FOR HUNGRY CALIFORNIANS

U.S. District Judge Stanley Weigel has ordered federal and state officials to immediately provide a food stamp program for all needy Californians.

His order yesterday sets up a panel of three federal district judges to study constitutional questions involved in setting a precedent that may apply to all other states.

In a hearing Dec. 23, attorneys for the California Rural Legal Assistance program argued 16 of the state's counties have no food stamp program.

FINDINGS

Judge Weigel's order was based on stipulated findings that:

There is substantial hunger in California counties not implementing federal food programs.

Federally owned surplus food is available to feed the hungry in the state.

The U.S. Department of Agriculture has a surplus of \$300 million which can be used to feed the hungry throughout the United States.

Attorneys for the CRLA said Judge Weigel's order marks the first time such action concerning the food stamp program has been taken, although petitions have also been filed in 26 other states.

Thirty San Benito County farm workers and their families and others supporting the program took part in the local hearing.

EVIDENCE

According to the attorneys the evidence at the hearing showed there was a substantial amount of hunger in California counties without federal food stamp programs."

One witness, Alejo Hernandez, a farm worker and father of nine testified he earns less than people on welfare receive and has less available for food for his children than is spent in the state annually for seeing-eye dogs.

Another witness, Mrs. Alta Hernandez, a widow and mother of five, said she spends 65.9 percent of the family's limited income for food, while the average middle class family spends only 20 percent of its income.

Judge Weigel's order set no date for the three-judge panel to meet, but his order was effective immediately.

ATTORNEYS

The CRLA attorneys petitioning the court are Robert Gnaizda, Martin Glick and Don Kates, Jr.

Early this month, Agriculture Secretary Orville Freeman announced in Washington the food stamp program will be liberalized so the poor can buy more food for less cash.

He said that more than 500,000 persons would be affected and that the policy changes would cost an additional \$14 million during the rest of the fiscal year ending June 30.

A family of four in the South, with a monthly income of under \$30, now can buy \$48 worth of food for \$2 in stamps. This ranges up to \$60 in food for \$26 worth of stamps for a family in the \$60-\$70 monthly income category.

Beginning in February, the range will be increased from \$58 worth of food for \$2 in stamps, to \$62 worth of food for \$24 in stamps.

THE NORTH

In the North, a four-person household with monthly income less than \$20 now receives \$52 worth of food for \$2 in stamps, or \$66 worth of food for \$28 in stamps at the top of the range.

Under the liberalized plan, \$2 in stamps will buy \$60 worth of food for the poorest families. Those in "higher income" brackets of \$60-\$70 a month will be able to buy \$66 worth of food for \$26 in stamps.

In the past, the 16 counties without food programs have contended the decision on using federal food supplies rests with the county board of supervisors.

During the court argument, Judge Weigel said the fact of discrimination appeared obvious when federal food was supplied to a needy person in Santa Clara County but not to a similar person in San Benito County.

[From the Modesto Bee, Modesto, Calif., Dec. 15, 1968]

MINIMUM WAGE ORDER CREATES DILEMMA

Although courts have ordered California growers to pay back wages to make up the difference in a new minimum wage ordered last Feb. 1, millions of dollars may never reach the farm workers' pockets.

The new minimum wage of \$1.65 an hour for women and \$1.35 an hour for minors was ordered last month after most of the harvest was completed and the transient labor force had returned home.

Most farmers who did not pay the minimum wage are not particularly anxious to pay the back wages, and the state agency charged with enforcement of the new minimum wage is not equipped to enforce the back payments.

Rae Codoni, secretary-manager of the Growers Harvesting Committee of Stanislaus and Merced Counties, feels, as do most grower's representatives, that most women and minors were paid at least the minimum wage for most farm work in the San Joaquin Valley last season.

But last season officially escaped the new wage minimums when several growers associations sought and won injunctions preventing enforcement the day after the State Industrial Welfare Commission ordered the new higher wages.

INJUNCTION LIFTED

The injunction was lifted last month by an appeals court decision, the result of action by the Modesto office of California Rural Legal Assistance, Inc., and the state attorney general's office. The CRLA represented two women on behalf of women farm workers in the state, said to number 100,000.

The enforcement dilemma has just begun.

The Division of Industrial Welfare, charged with enforcing the three new wage orders and 11 other wage orders, has only 48 field workers working from 19 offices to cover the state's nearly 3 million workers and 400,000 employers.

This actually is the first time the division has had to enforce a minimum wage for farm work. In 1963, when the minimum wage for women and children was set at \$1.35 an hour and \$1.05 an hour respectively, the same grower associations sought and won an injunction preventing enforcement.

The appellate court in San Francisco, which heard testimony on the 1963 order last month, is expected to hand down a decision covering the past five years soon. If the court rules in the state's favor, and upholds the minimum wage order, millions of dollars and thousands of other workers may be involved.

Virginia Allee, chief of the division, said, "it is impossible to tell" how many workers may be affected. She said she is "reasonably sure" employers have been paying the minimum wage or more.

WORKER ESTIMATES

Miss Allee said estimates of the number of agricultural employers in the state range from 67,000 to 100,000.

Tom Richardson, secretary of the California Farm Bureau Federation; said agricultural employers were warned in advance to be prepared to pay the differentials in case the decision went against them.

Richardson, in an article in this month's California Farm Bureau Monthly, warns growers "only the Division of Industrial Welfare has the authority to enforce these orders." He said the reminder was necessary because several County Farm Bureaus had been contacted by CRLA staff members.

John P. Kelly, co-directing attorney for the Modesto CRLA, said his office has not contacted individual growers, but has taken the role of an enforcement agency by making an effort to obtain claims from individual farm workers who may have been underpaid last season.

Kelley said one woman in Patterson listed eight growers who employed her last season for less than the \$1.65 hourly minimum.

2,100 EMPLOYERS

In Stanislaus County there are about 2,100 agricultural employers. Stanislaus, San Joaquin, Tuolumne, Calaveras Amador and Alpine Counties are covered by the Division of Industrial Welfare Stockton office at 31 E. Channel St.

The six counties are served by one agent, Thomas Hardwick. The office has one vacancy created by the retirement of another agent. Miss Allee has indicated additional agents may be hired to help try to enforce the new wage order.

Hardwick is in Modesto on Wednesdays in the Beaty Building at 1016 J. St. to receive and service claims by farm workers.

A claim from one farm worker entitles Hardwick to open the books of the grower involved and demand back payments to all employes who were not paid the new minimum.

However, another problem of enforcement is record keeping by some growers and farm labor contractors which does not show the hourly rate for piece work.

The new order says 80 percent of the workers in a field on piece rates should be paid the minimum hourly wage.

HARDEST HIT

Hardest hit by the new minimum will be berry growers.

[From the Los Angeles Times, Los Angeles, Calif., Nov. 15, 1968]

PAY WOMEN MORE, GROWERS ORDERED

(BY HARRY BERNSTEIN)

California growers were ordered Thursday to boost their minimum wage for women by 35 cents an hour, retroactive to last Feb. 1, and the order could quickly affect male farm workers, too.

Sheldon Greene, counsel for the California Rural Legal Assistance (CRLA), predicted that the order will mean "between \$5 million and \$10 million in back wages for California farm workers."

The order was issued by the 3d state Court of Appeal in San Francisco. It affects only women and minors covered by the minimum wage laws of California. Men are not covered by the state law and the federal minimum wage law and the federal minimum wage law which affects both men and women is now just \$1.15 an hour, going to \$1.30 in January.

The state minimum wage now is \$1.30, but goes to \$1.65 under the new order. Greene said while only 100,000 women and an undetermined number of minors are now involved by the latest order, CRLA is planning to try to force coverage of male workers as well under federal antidiscrimination laws.

"Federal laws say it is illegal to discriminate against a person because of sex, and we say it is discrimination to require growers to pay \$1.65 an hour minimum to women and not men," Greene said.

Mrs. Virginia Allee, head of the California Industrial Welfare Division, said Thursday night that growers will be expected to pay immediately any back wages owed to workers.

The orders apply to workers in commercial packing sheds in towns, sheds in the fields, and field workers.

The rate for boys and girls under 18 is \$1.35 an hour, not \$1.65, but in most cases all women and minors are entitled to overtime pay after eight hours a day or 48 hours a week.

One exception is for minors working in the fields. They are not entitled to overtime pay when they work beyond eight hours a day or 48 hours a week.

LEGAL SERVICES GROUP SUES TO AID FARM WORKERS

SAN FRANCISCO.—A suit seeking to bring an estimated 1.5 million domestic farm workers in the U.S. under the protection of unemployment compensation laws has been filed in the U.S. District Court here by the California Legal Assistance, a poverty-aid legal group.

The suit was a class action technically brought on behalf of farm workers across the country, though it bears down heavily on California conditions where agricultural laborers are currently engaged in a bitter unionization drive. Listed as specific plaintiff—representatives of all farm workers were two Castroville, Calif., men, Antonio Dorado, 56, and Ramon Romero, 53.

Named as defendants were U.S. Secretary of Labor Willard Wirtz, California Employment Director Peter Weinberger, and four other federal officials. The suits requests an injunction to compel the U.S. government to collect federal unemployment tax funds for farm workers.

District Judge Albert C. Wollenberg set November 27 for a show cause hearing on a preliminary injunction.

The legal assistance group said in the complaint that farm workers were not covered when the original federal statute was enacted in 1935 because agriculture was then a predominantly small—family affair. Today, the complaint added, farming is a mechanized business dominated by million-dollar farms to which rules applicable to other industries should apply.

It is economically feasible to cover farm workers, the complaint added, since the federal unemployment fund has an asserted \$10 billion surplus, including \$1 billion in California. This means, the complaint continued, that if farm workers are included in unemployment compensation, California, for example, would still have a surplus of about \$75 million in its share of the fund.

Basically, the suit calls for a reinterpretation of the controlling federal law to allow coverage of farm laborers.

CALIFORNIA RURAL LEGAL ASSISTANCE

ANNUAL REPORT

*1212 Market Street
San Francisco 94102*

September 1969

T A B L E O F C O N T E N T S

I. SOMETIMES RURAL JUSTICE	1
II. CONGRESSMEN ATTACK CRLA	6
III. EVERYONE CANNOT BE SERVED	7
IV. CASELOAD GUIDELINES	10
V. COUNTING "LEGAL PROBLEMS" AND ASSESSING THEIR SIGNIFICANCE	13
VI. AUGMENTING AND ALLOCATING SCARCE RESOURCES	31
VII. QUALITY LEGAL SERVICES	36
VIII. COMMUNITY CONCERNS	44
IX. CONCLUSION	49

One Saturday night in early December 1968, three teen-age Mexican boys are busy driving around the small town where they live, looking for something to do. Like the town of 1500 where they live, filled as it is with the acrid smell of nitrate chemicals and decaying cow manure, the names and addresses of these boys would not come to our attention, except for a series of incidents which occur this evening. Observing a number of people in front of the town fire house-gas station, the boys alight from their automobiles, join the gathering, which turns out to be a party. Obtaining permission from the hostess, they commence eating chicken -- until the host arrives, accuses the boys of being members of a gang which has been vandalizing his trucks, (the host is a grower, the boys are farm workers) and an altercation ensues. The host swears at the boys and they swear at him. He telephones the deputy sheriff, and signs a complaint for the arrest of the most vocal of the three boys, whom we shall call Manuel Ybanez. (As his attorneys, we withhold his real name in order to furnish him some measure of privacy.) Apparently in the view that Ybanez's ascerbic language is somehow more dangerous to people than that of the host, Ybanez is charged with the use of profanity in front of children and women, an offense which is punishable under the California Penal Code, and is locked up for the weekend. When he is arraigned in Justice

Court the ensuing Monday, the Justice Court judge denies him bail and orders him incarcerated until his trial the following week, noting that Ybanez, previously adjudged guilty of petty theft, has violated the terms of his probation. At his trial, Ybanez pleads guilty, and is sentenced to 180 days in jail. The record of the trial indicates Ybanez is provided with a translator and a lawyer at the trial, but does not reflect the comments of the judge who, fulminating about juvenile delinquency among Mexican-American youths in Ybanez's town, declares his intent to make an example of Ybanez. As he leaves the courtroom, Ybanez wonders if he is being punished for the Saturday night incident or for various unspecified offenses by persons not then present before the judge. One hundred eighty days in jail for having sworn at a grower?

Finding her son in jail, Ybanez's mother requests help from an attorney employed by California Rural Legal Assistance (who we shall call "Jones"). Jones is surprised when he investigates the facts of the case. According to the records of the Justice Court, Ybanez's probation expired two months before the Saturday night arrest, which means that his subsequent incarceration for violation of probation is patently illegal. Moreover, when Jones mentions the Ybanez case to the lawyer who was reported to have represented Ybanez at trial, the other lawyer says, "Ybanez? I have never heard of him." Thereupon, Jones files a petition for habeas corpus with the local Superior Court judge, who is empowered

to review the actions of the lower level Justice Court; the petition is granted, on the basis that Ybanez's legal rights have been violated; a new trial is ordered, and Ybanez' is free to spend Christmas with his mother and two younger brothers, whom he helps to support.

The Justice Court judge is sufficiently upset by the judgment that the following Monday he announces he will regularly appoint Jones to represent indigents in criminal cases if Jones is so fired up about protecting them. Jones protests as courteously as he can. The county has already hired two public defenders to provide criminal representation to indigent defendants, he points out; the Office of Economic Opportunity forbids OEO funded lawyers like himself from duplicating such local efforts by getting involved in criminal cases; although the petition for habeas corpus concerned the legality of a criminal hearing, it is a civil proceeding which is not normally taken by local public defenders; and therefore, while he is permitted by OEO to take an habeas corpus petition, he cannot handle criminal cases. When the Justice Court judge remains adamant, Jones again appeals to the Superior Court judge, and is upheld for a second time.

This is the end of the matter for Ybanez and the two judges, but not for Jones and CRLA. Because his salary is paid by the government and he is thereby beholden to

demonstrate that he is not frittering away the public treasury, and because he represents poor people, who are often called upon to justify themselves as well as their actions, he is requested to justify his representation of Ybanez in a memo to OEO; to describe what he feels he has accomplished, and to categorize and count Ybanez and a hundred other clients whom he may represent during the year. "What are the major causes or conditions of poverty in the community? . . ." he is asked on Community Action Program (CAP) Form No. 81, as promulgated in August 1968 -- which is not to be confused with CAP Forms 7 and 7b, also published (in revised form) in August 1968, which call for accounts of the attorney's "work program" and "supplementary work program" respectively. "In what category of legal problem does the Ybanez case fall?" "What is the significance of the case?" "How many people were benefited by your agency's service?" "What other agencies in the community are dealing with problems related to the program account?" "What arrangements do you have with these agencies to coordinate their programs with the activities of the program account?"

"Coordination," "functions," "target area groups," "expression of their needs and interests related to the program," "arrangements," "approaches," "effectiveness," "information" -- these are some of the circumlocutions which may be culled from a mere two pages of CAP Form 7. And the

the forms are endless. During the past two years, the number of questions asked on OEO forms has trebled. In 1968 alone, CRLA employees expended over 800 man and woman hours keeping track of what they did, when they did it, how long it took them and what they called it.

If we are not careful, we can become turned around by these questions. In speaking of the lawyer, as we are encouraged to do when we report to the government, we can underestimate the participation of the clients, who are supposed to be telling us, the lawyers, what to do. When speaking of "our" purposes, as we are often asked to, we can make our clients sound like means to our ends, which indeed they are not and cannot be, under the ethics of our profession. In discussing what we plan to do in the future, we can suggest that our purposes precede the problems of the clients, and, indeed, create those problems, which cannot be the case, either. The clients must be the starting place . . . which is good to keep in mind when trying to answer the questions that the government asks us, as we try to do in this report.

II

On July 28, 1969, four California Congressmen called for the cut-off of federal funds to California Rural Legal Assistance.^{1/} One described the organization as a "bunch of beatniks" and a "force for social revolution." Another said he believed, "CRLA simply hasn't solved the problem" and had in many cases aggravated it by not being available to the poor because its force was "out on other matters." CRLA's lawyers were bent on social change, not on helping people, the Congressmen continued (thereby implying that "social change" and "help to people" are somehow antithetical to each other, or are at least mutually exclusive); and as evidence of that fact, they pointed to the number of persons who have not yet been assisted by CRLA attorneys (thereby suggesting that if the attorneys were doing their jobs properly, all of the people who want help would receive help).

The charges seem clear enough and straight forward, but we find them curious. We shall try to explain why.

^{1/} San Jose Mercury, San Jose California, July 28, 1969.

III

There are about 296,000 lawyers in the United States, or approximately 1 for every 640 persons. Assuming that this ratio represents an adequate number of lawyers, which it probably does not, there should be 49,000 lawyers for the 16.5 per cent of the population -- or 33 million people -- who are members of families making less than \$3,000 per year. Yet, in fact, not more than 4,000 lawyers are available to serve these 33 million people.^{2/}

In the 16 rural California counties served, in whole or in part, by California Rural Legal Assistance attorneys, there reside at least 550,000 people who are members of families making less than \$3,000 per year.^{3/} If legal services attorneys are to be made available to these people according to a 1 to 640 ratio, a minimum of 859 free lawyers are now needed in rural California. And yet there are now only 73 attorneys available in these counties, 36 salaried attorneys in CRLA and approximately 36 salaried attorneys in other legal services

^{2/} Silver, "The Imminent Failure of Legal Services for the Poor: Why and How to Limit Case Load," 46 J. of Urban Law 217 (1968).

^{3/} 1960 U. S. Census

programs.^{4/} (There are also 110 public defenders in these counties, but they provide virtually no assistance in civil cases.)^{5/}

The case load statistics of other legal services programs confirm these observations. When we reviewed the quarterly statistical reports of fourteen legal services programs (including five rural programs and nine urban programs), we could not find a single program which provided representation to every eligible person who applied for service.^{6/} In three of these programs, for example, one

^{4/} This figure is based upon a survey of the OEO grants which were made to legal services programs based in rural counties, and included: Merced Legal Services Association; Legal Aid Society of Monterey County; Sacramento Legal Aid Society, Legal Aid Society of San Joaquin County; Legal Aid Society of Santa Clara County; Legal Aid Society of Santa Cruz County; Stanislaus County Legal Assistance; and Kern County Legal Aid Society.

^{5/} This figure is based on a telephone conversation on September 10, 1969, between Sandra Rogers, a law student working for CRLA, and the public defender offices in Sacramento, Yuba, Sutter, San Luis Obispo, Santa Barbara, Monterey, Santa Clara, Santa Cruz, Merced, Kern, San Joaquin, and Stanislaus Counties.

^{6/} Surveyed were the quarterly reports of the following programs: Alaska Legal Services Corporation; Fresno County Legal Services; Napa County Legal Assistance Agency; Legal Aid Society of Orange County; Sacramento Legal Aid Society; San Francisco Neighborhood Legal Assistance Foundation; Legal Aid Society of San Joaquin County; Legal Aid Society of San Mateo County; Legal Aid Society of Santa Cruz County; Legal Services Center of Ventura County; Washoe County Legal Aid Society; Legal Aid Committee of Multnomah County; Seattle King County Legal Aid Services; Pierce County Legal Assistance Foundation. A complete summary of the reports of these programs is included in Exhibit I, attached to this narrative. As of September 8, 1969, none of the quarterly reports for July 1, 1968 to June 30, 1969 had been received by OEO from the forty-odd other legal services programs in the Western region, which is the reason why our survey is limited to fifteen programs in the Western region.

person was refused service for every person who was provided with aid.^{7/} (In CRLA, one person in every six who applied for help was turned down.)

In view of these figures, there can be little question concerning the ability of legal services attorneys to minister to all of the poor people who presently apply to them for help. Indeed, to suggest that this is possible is to present a very misleading picture about what is possible and to raise false expectations among the poor, who have already been disappointed by many Federal and state programs. Such claims may also have the unhappy effect of delaying efforts to increase the legal representation available for poor people, through such devices as insurance, mediation and arbitration, and the training and accreditation of lay advocates, as well as through increased expenditures for legal services attorneys.

Instead of assuming that all the poor cannot be served, we should attempt to calculate the number of people who can be reached and how more can be served within existing resources without diminishing the quality of representation which they receive.

^{7/} Those programs were the Reno and Tacoma legal services programs.

IV

The Legal Services Division of the Office of Economic Opportunity has never established guidelines as to how many problems legal services attorneys are expected to handle. OEO does conduct annual evaluations of legal services programs and, presumably, lets the programs know whether they are handling too few (or too many) problems, but OEO does not make these evaluations public; and insofar as we can determine, the blue ribbon panel which advises OEO and which is called the National Advisory Committee for Legal Services, has never sifted through OEO's hundreds of evaluation reports in order to lay down guidelines of how much will be expected. Since OEO has funded programs which have handled as few as 200 problems a year, as well as those in which each attorney has processed more than 1800 cases per year,^{8/} there seems to be a considerable range as to what OEO permits.

Four years ago, the National Legal Aid and Defender Association, the official confederation of legal services programs in the United States, advocated an annual case load of no more than 900 cases per attorney; but of late, this figure has been criticized by numerous commentators, who have pointed out that "lawyers handling 900 cases a year are not

8/

See, The Legal Aid Society of San Francisco, Statistical report - Calendar Year 1965 (printed brochure).

likely to be giving 'resourceful and imaginative' advice to anyone."^{9/} NLADA is now considering stricter guidelines, to be discussed at the 1969 Annual Meeting of that body, which provide that "no lawyers should handle more than 500 cases or matters each year."^{10/} According to a study conducted in New York several years ago, only 2 per cent of the private attorneys surveyed handled more than 500 cases per year,^{11/} so it is not coincidental that the NLADA now speaks of 500 cases as the outside limit, noting that the work load might be less than this. As NLADA states in its 1969 Proposed Guidelines:

"One possible approach, which deserves serious consideration, would limit or focus the work of the organization on

- a) the handling of cases that deal with the problem or grievance shared by a large number of persons served by the organization or about which such persons feel strongly;
- b) the handling of cases that offer the possibility of enhancing the ability of the persons served by the organization to participate in the solving of neighborhood or community problems;

^{9/} Silver, op. cit., at 248.

^{10/} NLADA, "Preliminary Draft on Case Load Limitations" (mimeo) (1969), p. 1.

^{11/} See Carlin and Howard, "Legal Representation and Class Justice," 12 UCLA L. Rev. 381 (1965).

- c) the handling of cases that offer the possibility of increasing community understanding of a problem or issue and of advancing the knowledge of the person served by the organization with respect to their legal rights and responsibility;
- d) the handling of cases that foster or assist the development of leadership among the persons served by the organization;
- e) the handling of cases that offer the possibility of enhancing the income potential and economic growth of the person seeking assistance or the area where the person served by the organization resides;
- f) the handling of cases that offer the possibility of eliminating the practice or rule that affects a large number of the persons generally served by the organization.

Such criteria as listed above are only illustrative and are in no way intended to be exhaustive. They do, however, incorporate a common thesis about the relationship of law and legal service to poverty. Unless the limited resources of legal aid services are focused upon approaches to the elimination of the causes of poverty and to the enhancement of the ability of poor people to resolve their own problems, individually and as a group, there will be no end to the need for more and more resources." (Emphasis supplied.)^{12/}

^{12/} NLADA, op. cit., pp. 2-3.

V.

There are at least five different ways in which CRLA attorneys supply legal representation to clients. An individual person may receive help on a problem (the "individual client situation"). Or a number of identified people with related problems are assisted at the same time but are provided with separate individual representation (the "multi-client situation"). Or an organization of people is represented as an organization, and whatever relief is secured runs directly to the organizational entity, and not to the members (the "organization situation"). Or a large number of people with identical interests, commonly called a "class," are represented along with certain named clients, and although the members of the class are not known at the outset, some or all are by the end of the case, when some sort of relief (usually in the form of money) is made available to them (the "identifiable class situation"). Or a class of unidentified people is represented along with certain named clients, and although the members of the class may be tangibly assisted by the outcome of the case, they are never identified, contacted or given a tangible

portion of the relief (the "unidentified class situation").

All OEO asks for in its statistical forms is the number of legal problems handled, as well as the number of groups represented. Sometimes it is easy to determine what are "separate legal problems," but sometimes it is not. What about the "individual client" who obtains a divorce in January and then in September asks the attorney to obtain a restraining order against her husband to stop him from beating her? (Since the restraining order relates to the circumstances of the original divorce action, or, to use the time-honored phrase of the Federal Rules of Civil Procedure, is involved in "the same transaction and occurrence" and is filed as part of the same court proceedings, the order and the divorce would be lumped together as the same legal problem.) Or what if the attorney who originally sued the Industrial Welfare Commission to validate a minimum wage order is now filing individual claims against various employers for back minimum wages which have become due pursuant to the IWC order? (Here, each wage claim would be counted separately and apart from the original Industrial Welfare Commission suit, since each claim would involve a different claimant, different facts, a different employer in most cases, and would therefore require a separate work product by the attorney.) And how should the "multi-client," "group client" and "identified class"

situations be categorized, where work which an attorney does for one client is of benefit to other persons but where he must also contact clients separately, take account of their separate interests, and argue for the separate interests as well as for the group interest? (Here, in this especially gray area, the statistical analyst is advised to exercise discrimination, and determine how much separate work is involved for each client before deciding whether to count the work as one legal problem or a series of problems.)

Gradually, through trial and error, a standard has developed: if an attorney interviews a person and does at least twenty minutes of work for him which he does not do for any other client, then work on a separate legal problem is recorded.

This tabulation of separate legal problems does not take account of many people who are deeply involved in a legal action, whose rights are determined by it and who receive tangible, measurable benefit from it (such as the receipt of "X" dollars) but who do not receive individualized work products from a CRLA attorney -- those people, in other words, who are involved in the "organizational," or "unidentified class" situations, as well as those who are part of an "identified class" but are not individually contacted by an attorney and do not receive a separate, distinct work product from him. Yet

clearly, all of these persons are in some way represented by CRLA attorneys, and often receive benefits from this representation. Unless some means is developed to report their cases, a serious problem of underreporting and distortion can occur, and a program which filed five lawsuits on behalf of three hundred people would actually appear to be representing ten times fewer people than a program which filed fifty lawsuits on behalf of fifty people, even though it was actually serving six times more people. To avoid such underreporting, we have not only counted and categorized the number of clients whom we served individually, but also the number served who were members of "organizations," "unidentified classes," and "identified classes" whose members were not individually contacted and assisted by CRLA attorneys.

Once we consider these latter categories of clients, we should be able to determine whether our attorneys realized any substantial impact beyond the various individual problems which they handled. If they did, our yearly figures would show that they directly represented more people than they provided with separate, distinct work products, and benefited more people than they directly represented.

From July 1, 1968 to June 30, 1969, 36 salaried CRLA attorneys worked on 15,423 separate legal problems, or a yearly average of 429 legal problems per

attorney. 13/

13/ This figure understates the number of problems handled by CRLA attorneys and community workers, due to the failure to report many little problems which are handled. As estimated by the Directing Attorney of CRLA's Santa Maria office:

'Approximately 300 problems handled each year by the office's two community workers go unreported. This represents approximately three cases per week per worker. Both community workers are in daily contact with clients in the field and discuss legal matters with them and perform legal or para-legal services and are not able to report it because they do not have the forms available. Such services include: . Interpretation in court, translation of documents; assistance in making reports to the Department of Immigration; advise only as to Workmen's Compensation claims or criminal charges (such as the nature of the person's rights and liabilities and the procedure which he might follow in exercising his rights).

About 150 problems handled during the year by our intake interviewers go unreported. This represents approximately three cases per week. Such cases usually arise because a client is calling by telephone or the office is extremely busy and the intake interviewer is able to advise the client properly, after brief consultation with the attorney, but does not have time to record the case on our statistical forms. Advice of this sort usually involves: A. The small claims court; B. Criminal charges; C. Claims for child support, etc. (We might add incidentally that while we realized many cases in the Santa Maria office went unreported by the community workers and intake interviewers, we were rather surprised to find this large a number. The staff was questioned rather thoroughly on this and they assured us that their estimates were very much on the conservative side.)

About 100 cases undertaken during the year by the office's attorneys have gone unreported. This represents approximately one case per week per each of the two attorneys during the year. Usually cases of this sort would arise by way of a telephone conversation from a welfare worker or some other professional who has a client at his side. We are able sometimes to offer proper legal advice by telephone -- although we will never do it if there is any problem posed by telephone communication -- and because of telephone communication, there is no time to record the case. (Footnote continued on page 18.)

The CRLA case load of 429 legal problems per attorney compares with the average annual case load of 232 legal problems per attorney in the Anchorage, Alaska legal services program, 239 legal problems per attorney in the Reno, Nevada program, 328 in the Napa County, California legal services program, 326 in the Tacoma, Washington program, 380 in Seattle, Washington, 434 in the San Francisco Neighborhood Legal Assistance Foundation, 466 in the Ventura County program, 486 in the San Mateo County, California legal services program, 717 in the Sacramento program, 753 in the Portland, Oregon program, 640 in the Fresno County legal services program, 827 in the Santa Cruz County program, 858 in the Orange County program and 1,224 in the Stockton legal services program.^{14/}

13/ (Continued)

Approximately 50 cases handled during the year by our summer law clerks go unreported. This represents field sanitation investigations during the first part of the summer of 1969. Because there was not always a one-to-one correspondence of grower to client, these cases went unreported on these statistical forms, although they nonetheless represent a useful expenditure of staff time on behalf of various farm worker clients. "

Since these unreported problems often involve less than twenty minutes of an attorney's time (although they may consume substantially more of a community worker's day), we have not attempted to include them in the official tabulated statistical summaries for the year. The existence of these unreported problems should be noted, however -- and we estimate the over 2,700 were handled by community workers alone from July 1, 1968 to June 30, 1969 -- if an accurate picture of CRLA's work is to be conveyed.

14/ These figures are based upon the 1968-1969 quarterly reports of these legal services programs.

As these figures indicate, nine of these fourteen programs -- CRLA, Seattle, Alaska, Napa, Tacoma, San Mateo, Ventura, San Francisco and Reno -- were within the recommended 500 limit matters per year which is now being considered by the National Legal Aid and Defender Association as an absolute maximum.

In approximately 13,820 of the 15,423 legal problems handled -- or 89 per cent of the total problems -- one individual client was represented by a CRLA attorney. These "individual client situations" consumed over 75 per cent of the CRLA attorneys' time. The remaining 1,603 problems, or 11 per cent of the total cases, involved representation of more than one person, even though, according to the standard discussed previously, each of the cases was counted as only one legal problem.

The total number of persons involved in this latter category of cases -- and consequently the total number of people represented and benefited by CRLA attorneys -- was far larger than we had previously supposed and in fact was not known to us until we made a detailed survey in August, 1969. The survey revealed the following: From July 1, 1968 to June 30, 1969, CRLA attorneys represented 135 organizations with a combined membership of some 14,588 persons. 46 of these organizations were represented on 10 or more occasions. Attorneys drafted by-laws, articles of incorporation, and filed applications for tax exemption for 48 groups, were

involved in litigation on behalf of 24 groups, undertook drafting of leases, contracts and other agreements and undertook negotiations on behalf of 16 groups, and provided legal advice and training to 57 organizations.

Since it is too time consuming to describe all of the organization problems handled by CRLA attorneys, we include here an excerpt from a report from CRLA's Modesto office describing the legal work undertaken for four groups, as an indication of what CRLA attorneys do on a routine basis.

Case 1:

"Assistance rendered to both Patterson and Salida Self-Help Housing [composed of 230 families] was legal advice on potential property litigation problems. In both cases, we assisted Self-Help Housing in reaching an agreement with the Patterson City Council and the property owner adjacent to the Salida sub-division...[Another] type of assistance given to the Salida group was communication with the office of Congressman McFall in an attempt to speed up [loan] checks from Farmers Home Administration. Finally, the office has assisted several members of Salida Self-Help Housing in clearing up their deed problems so they could obtain a Self-Help loan."

Case 2:

"From October 1, 1968, until April 1, 1969, one community worker from the Modesto office spent full-time assisting the Stanislaus County Buyers Coop. In addition, two separate attorneys have assisted the Coop in drafting the Articles of Incorporation, the by-laws, the Permit to Sell Shares of Stock and the property lease. The Co-Directing Attorney, John Kelley, is presently serving on as general counsel for the Co-op in advising on any potential legal problems. The number of occasions in which the Co-op has been assisted

is difficult to estimate, but a rough estimate would be one hundred occasions."

Case 3:

"Initially, we assisted Steve Haberfeld in preparing Articles of Incorporation for the Livingston Community Action Council. Further assistance was rendered in negotiating with the City of Livingston and the County of Merced in obtaining a zoning permit for the LCAC's building...[and] in obtaining approval to function as a state delegate Day Care Center."

Case 4:

"The Riverbank Community Center is a center for all residents of [the] Riverbank community - approximately 4000 individuals. There are approximately 1000 low-income people in Riverbank who were not being allowed the use of the center when it was opened. We appeared at the Riverbank City Council meeting and talked with administration from HUD to assure that the Center would be open to low-income people. Since that time low-income persons in Riverbank are allowed to use the Center."

In addition to the organizations which were represented, CRLA attorneys filed 63 class actions, 42 on behalf of persons who later became known to the attorneys, and 21 on behalf of unidentified members.

Eight class actions were filed on behalf of approximately 15,600 different consumers. In Vasquez v. Karp, for example, 60 allegedly fraudulent contracts involving the sale of home appliances were nullified on behalf of some seventy consumers at a saving to them of some \$20,000. In a second action, which must remain unnamed here because of the terms

of the final agreement, a large Los Angeles corporation agreed to dismiss actions and judgments for a total of \$656,000 against 1,650 different low-income consumers. Commenting on the use of class actions in consumer fraud cases, the San Jose Post Record stated on June 10, 1969: "The California Rural Legal Assistance began the trend two years ago in the Golden State. Santa Clara County's Legal Aid Society and similar agencies throughout the nation financed through the Office of Economic Opportunity copied the concept."

In thirty class actions, a total of 180,000 farm workers residing in California were represented; and five actions were filed on behalf of 1.5 million farm workers throughout the United States. In Munoz v. Unemployment Insurance Appeals Board, and in a series of other lawsuits filed against agricultural employers, pressure was placed on the State and on agricultural employers to enforce field sanitation regulations, resulting in the doubling of toilet and handwashing facilities which were made available to California farm workers in 1969. (The pressure became so intense, in fact, that The California Farmer, the monthly publication of the California Farm Bureau, published a five-page supplement in June listing field sanitation regulations, along with the names of all portable toilet sellers and lessors in the state and editorialized: "... it behooves us as farmers to keep our skirts so clean that

we are above reproach. We must work to see that...California Rural Legal Assistance, Inc., can find no instance in which we are not in complete compliance with every one of the laws and regulations pertaining to farm workers.") In Ybarra v. Fielder, the State Director of Agriculture was required to make available to farm workers information regarding the use of pesticides which might be injurious to them. In Alaniz v. Wirtz, as a consequence of complaints filed with the Department of Labor in August and September, 1968, some 5,000 foreign agricultural workers were refused entry into the United States, and approximately \$2,250,000 in wages was preserved for American workers, and some \$300,000 in welfare costs were saved California taxpayers. In Gooch v. Clark, the employment of some 80,000 commuter aliens in the United States was attacked as having an adverse and illegal effect upon domestic workers. In Hernandez v. Zuckerman Farms, Rios v. Harder Packing Co., Breunig v. Orr, Rios v. Williams, and Zabala v. Steak Mate, the use of illegal aliens ("wetbacks") by domestic employers was challenged, in an effort to reduce the flow of some 450,000 aliens from Mexico into the United States and to preserve thereby the jobs of American workers who were displaced by such illegal competition. In Romero v. Wirtz, the exclusion of 1.5 million U. S. farm workers from unemployment insurance benefits was challenged as a violation of the equal protection provided by the U. S.

Constitution. In Rivera v. Division of Industrial Welfare, an order was upheld increasing the minimum wage for 50,000 women and children, resulting in benefits of from 15 to 20 million dollars for those workers.

Five class actions were filed on behalf of 240,000 welfare recipients. In Macias v. Finch, CRLA attorneys challenged Federal and state rules prohibiting welfare payments to families in which the father is employed full-time. If successful, the suit might augment the income of recipients by as much as 4 million dollars. In Diaz v. Quitoriano, county welfare departments were required to inform applicants of their right to appeal decisions declaring them ineligible for welfare benefits. And in Hernandez v. Hardin, the U. S. Department of Agriculture was ordered to institute food programs in nineteen California counties which had refused to sponsor them; and as a result of the order, food programs were instituted in all nineteen counties at a benefit of approximately 20 million dollars to some 85,000 people.

In three class actions, approximately 4,500 housing residents were represented, and in one action, some 80,000 low-income public housing residents were represented. Recovery and grants-in-aid secured exceeded \$3,600,000. In Valtierra v. Housing Authority of San Jose, for example, the California constitutional requirement that the voters in a community most approve any low-income housing

project prior to its erection is being challenged. If this requirement is held unconstitutional, this case will pave the way for the construction of thousands of units of decent, low-cost housing for hundreds of thousands of poor Californians.

In nine class actions, a total of 185,000 school children were represented. In Alvarez v. Force, a Federal judge ordered Gonzales Union High School not to dismiss a Teacher Corps trainee who helped her students form a chapter of the Mexican-American Youth Association. In Marquez v. Hardin, CRLA attorneys sought to require the U. S. Department of Agriculture to make free school lunch programs available to needy children in California instead of using the funds to lower the cost of lunches sold to those who may not be needy, as the Department has done in the past. (Since 1946, when the National School Lunch program was begun, more than 4 billion dollars has gone to help the children of the well-to-do instead of the needy. Commenting on CRLA's suit, The Nation said on July 7, 1969: "It would be refreshing if, just once, a program of this sort were operated for the benefit of those for whom it was intended.")

Five class actions were filed on behalf of approximately 2,320,000 underrepresented voters. In Girth v. Thompson, CRLA attorneys sought to reapportion the largest irrigation district in the Western Hemisphere, the Imperial Irrigation District, on behalf of some 42,000 people whose

votes have heretofore been badly diluted. In Castro v. State of California, et al., some 60,000 U. S. citizens who speak only Spanish challenged the California Constitution provision requiring voters to be able to read the Constitution in English. In Larez v. Shannon, a Yuba City Superior Court held unconstitutional California's requirement that school bond issues must be approved by two-thirds of the voters, deciding that this requirement violated the one-man, one-vote principle of the U. S. Constitution. Since 79 of the 96 school bond issues in California that failed last year received majority approval, the decision, if upheld on appeal, will have the effect of validating the wishes of all the voters in the State who constituted a majority in favor of school bond issues but who failed to reach two-thirds majorities, or about 2,220,000 voters in 1968 alone.^{15/}

Of the total number of 63 class actions filed by CRLA attorneys from July 1, 1968 to June 30, 1969, 28 have not yet been decided, 18 were decided in favor of CRLA clients, another 7 were settled on terms favorable to CRLA clients, 6 were decided against CRLA clients in lower courts but are now on appeal, and 2 were decided against CRLA clients and are not now on appeal.

^{15/} More complete descriptions of many of the class actions handled by CRLA are included in Exhibit III, attached to this report.

In trying to estimate exactly how many different persons were represented in these class actions, we have to recognize, first of all, that where the same class of persons may have been represented in a number of actions they should not be counted more than once. Second, we should remember that even where the classes are described differently, such as "farm workers" and "consumers," a number of people may fall into both categories and likewise should not be counted more than once, although the separate recoveries they receive, as farm workers and consumers, can both be considered. Third, it is clear that the nature and extent of benefits realized by different classes may differ considerably, depending upon whether they are represented more than once, whether a decision favorable to them is reached, and whether a tangible measurable remedy, such as money, is delivered to them. We have tried to estimate the total number of persons represented by CRLA attorneys, and the total benefits obtained. Based upon the statistical reports of all nine regional offices and in-depth client surveys conducted by two offices, we would venture the following summary.

From July 1, 1968 to June 30, 1969, 408,000 different people were represented on more than one occasion, in organization cases or in class actions, or an average of 11,333 persons per CRLA salaried attorney; and another 2,433,000 people were represented on at least one occasion.

And a total of \$48,000,000 in benefits was obtained, as well as various non-monetary benefits and protections.

In addition, as stated previously, 13,820 persons were represented individually by CRLA attorneys. When this number is added to the 408,000 persons who were represented more than once in their class capacity, a total of 421,820 persons were provided with individual legal representation or with class representation on more than one occasion. This figure is in addition to the 135 organizations that CRLA attorneys represented.

By dividing the number of persons represented by the number of legal problems handled, we can form some idea of the leverage which CRLA attorneys were able to generate: for every legal problem which was handled, an average of 27 people were assisted. And by dividing the amount of money appropriated to CRLA in 1968 (\$1,527,889) by the number of legal problems handled and the number of people served, we can estimate the efficiency of the program: for each legal problem taken, an average of \$199.00 was expended, and for each person represented, an average of \$3.62 was spent.

These figures provide an interesting comparison with other legal services programs. The attorneys in the Orange County and Stockton programs handled more individual legal problems than did CRLA attorneys, but did not report representing a single organization or filing a single class

action. The Ventura and Santa Cruz programs, which also reported processing a slightly higher number of individual legal problems than did CRLA, each reported no more than six organizational class actions taken during the year. Of the fifteen other legal services programs surveyed, six averaged one hundred to four hundred more legal problems per attorney a year than did CRLA but ended up representing four to twenty-eight fewer persons per legal problem handled.

Indeed, with the exception of the San Francisco Neighborhood Legal Assistance Foundation (which seems to have reached a number of people comparable to that assisted by CRLA), the average number of people represented by each CRLA attorney was at least three times the number of people represented by attorneys in every other legal service program in the Western Region; the number of organizational problems taken by CRLA attorneys was at least two times the number taken by any other program, and the number of class actions was three times as great. In fact, only the San Francisco, Sacramento, Alaska and Portland programs reported representation of more than 5,000 people during 1968-1969.

These comparisons are not exact, despite the specific figure used, because of the paucity of figures from a number of other programs. The great difference between CRLA and other programs may be explained by the fact that we have expended more effort than have other programs in analyzing the number of people who have been reached by class actions which we have

filed. But this is only a partial explanation, we feel -- were the other programs providing more statistical analyses, those analyses would show that most of them were restricting their work to cases which reach only one person at a time.

VI.

How a program represents and aids the largest number of persons with the limited amount of money, manpower and time available to it is, in the argot of the management consultants, a question of "resource allocation."

As we have indicated, the class action is one method of maximizing resources, by benefiting a large number of people at one time. It is not the only method. Legal assistance to organizations at a critical stage in their growth may enable them to grow strong enough to bargain for themselves later on. (According to surveys made in three CRLA regional offices, for example, over half of the groups represented by CRLA attorneys were able to operate largely on their own, once they had been given some legal assistance.) Concentration on cases which receive wide publicity and attention in the poverty community tend to inform more people of their legal rights and to encourage them to vindicate those rights. (In 1968, 1,120 newspaper stories about CRLA cases were carried in 150 California newspapers and 11 national publications with a combined circulation of about 12,000,000 readers.) More efficient use of resources, such as the employment of non-professionals to do work normally undertaken by more highly paid attorneys, helps to squeeze more service out of the limited dollars which are available. (In 1968-69, 26 legal secretaries and

22 community workers were trained to assist attorneys in interviewing clients, investigating facts, and handling simple kinds of welfare, wage, and automobile claims.) Various outreach programs can assist in supplementing the help which CRLA lawyers provide, including distribution of pamphlets discussing legal rights, involvement of volunteers, and establishment of separate services programs for California's rural poor. (In 1968, CRLA staff members distributed 30,000 copies of a 30-page booklet entitled, "Farm Workers Demand Your Rights;" enlisted the aid of 931 volunteers who supplied more than 24,119 hours of volunteer time; received 703 different legal memoranda from 631 law students enrolled at eight different California law schools; and established the California Indian Legal Services Program, with annual funding of \$269,000; the Rural Development Corporation, with annual funding of \$650,000; and the Senior Citizens Project, with funding of \$85,000, to reach persons not already served by CRLA.) Finally, priorities can be established to focus attorneys' attention on those kinds of cases which are most likely to be of lasting benefit to the client community.

The issue of priorities is central to the question of resource allocation. If we decide, for example, that a person's poverty is essentially a function of his lack of money and ability to secure money, then we should emphasize

those cases which put money in his pockets. Or, if we determine that poverty can be characterized as a state of powerlessness or the inability of the poor to demand equal treatment from government agencies and private institutions, we should stress those cases which help to increase the bargaining power of the poor. Or, if we decide that the government has more capability to generate money and power for people than have private individuals, then we should place emphasis on cases which seek to encourage or compel the government to act on behalf of poor people.

In fact, CRLA has adopted all three of these strategies. Early in the development of our program, in September, 1966, our Board of Trustees formally resolved that CRLA should pay first attention to employment problems, since they concern a person's ability to make money, as well as the amount of money which a client receives or is able to retain; and that civil liberties and voting cases, while dealing with non-monetary interests, should also be considered as high priority matters, in that they may involve a man's basic liberty, as well as his influence in the community. Domestic relations problems, which are the most usual problem handled by most legal services programs, were deemed to be of a lower priority, not necessarily because they are less important to the people involved than, say, employment problems, but because they are not as likely

to generate income for the poor -- the goal which, after much discussion, the Board decided was the most important for CRLA attorneys. (There was at least one other reason why domestic relations were not given high priority: of all the legal problems which poor people have, domestic relations are most likely to be handled on a part-time basis by private attorneys at minimum fees which some poor people can afford to pay.)

The CRLA case statistics for the past year reflect these priorities. Four thousand, six hundred eighty-five involved employment matters (including 2,520 wage claims, 121 Workmen's Compensation issues, and 177 unemployment insurance claims); 3,863 involved welfare claims (including 2,935 state and local welfare matters, 179 social security claims and numerous veterans administration matters); 3,164 involved consumer problems (including 2,012 wage garnishments and attachments, 1,018 sales contracts, and 134 bankruptcies); 1,238 involved housing disputes (including 515 private landlord and tenant disputes, 110 housing code violations, 107 public housing disputes, and 713 housing financings); 1,835 involved torts, juvenile, school, commitment, and criminal cases before arraignment, and 892 involved family problems (including 375 divorces and annulments, 50 separations, 75 non-support actions, 118 child custody and guardianship actions, 38 paternity suits and 46 adoptions).^{16/}

^{16/} A complete summary of statistics concerning legal problems handled by CRLA attorneys from July 1, 1968 to June 30, 1969 is included in Exhibit II, attached to this report.

A glance at statistics from other OEO legal services programs shows that CRLA's priorities are not shared or practiced by all. In 8 of the 14 programs surveyed, divorces and other related family problems constituted at least 50% of the case load, while at the same time, employment problems made up less than 5%. In Ventura, that percentage reached 55%, while in Stockton it was 49%, and in Tacoma and Orange Counties it was 47%.

Which kinds of cases are likely to produce the greatest impact on behalf of poor people is a difficult judgment question which depends, in part, on one's view of what are the underlying causes of poverty, and in part on an assessment of how those causes may be attacked most effectively. (As the failure of many Community Action Programs indicates, it is easier to talk about increasing the "power of the poor" than to actually do it.) Since there is a good deal to argue about, we can feel a sense of confidence about the priorities we arrive at only if we do so in consultation with the people to be served.

VII.

If numbers of cases handled and people affected were the only measure of a program, then the vast array of legislative bills passed, programs started, dollars spent, and Viet Cong killed would mark the Great Society as a decided success. But such was not the case, as three years of war casualties and urban riots will attest. Something more was and is required of us. It is partly a sense of proportion and a feeling of humanity, intangible virtues which can hardly be made to happen or be proved to exist merely by talking about them; and it is partly a sense of quality, of the dispatch, precision, assurance, and helpfulness with which a job is done -- characteristics we can talk about a little more easily, since they fall within the concept of "professionalism" which lawyers are supposed to be concerned about.

Even "professionalism" is difficult to assess, however. How is good lawyering measured, anyway? Unless one has personal contact with him it is hard to say, and even when there is contact, lawyers are reticent about publicly judging each other, which may or may not indicate the extent to which the legal profession is a private club or interest group intent upon protecting itself.

It may be easier to answer the question of how well our lawyers have performed (as well as the question, "how

much for how many?") if we first consider what it is that they should not be doing. And countless legal commentators, from Justice William Brennan of the United States Supreme Court to Bernard Segal, President-elect of the American Bar Association, have agreed that what they should not be doing is acting like old-fashioned legal aid lawyers. For old-fashioned legal aid usually dispenses a decidedly inferior brand of legal representation. Fifteen to forty-five people were likely to be crowded into the office everyday to see the attorney, who spent seventy-five per cent of his time interviewing them, referring them to other agencies, and making phone calls on their behalf to try to arrange quick settlements with creditors, landlords, and complaining spouses. Handling as many as 300 open files at one time, the attorney was hard-pressed to keep track of what was going on, and in more than a few cases, time would run out before he could file necessary papers in court. Not having time to draft original complaints, cross-complaints, counter-claims and interrogatories, as well as to subpoena documents and take depositions, he could not find the strengths and weaknesses of his opponents' cases, he did not know where to attack and defend, and could not necessarily estimate what a fair settlement would be. Because he was never exerting counterpressure on those persons suing his clients, he had little bargaining power, was often unable to obtain fair

settlement for his clients, and had to choose between making an unfair settlement and going to court. He was rarely able to plan ahead for his clients and take preventive measures for them. Always putting out last-minute emergencies, he could rarely reach some of the underlying causes of some of those emergencies. In point of fact, he was likely to feel as powerless, as frustrated, and as resentful as his clients did, perceiving the legal system as a machine which constantly beat his clients down. And like his clients, he became trapped in a cycle where his ineffectiveness encouraged more legal actions against him, actions which put him even more on the defensive and took even more of his time, and made him even less effective. In order to retain some modicum of self-respect, he usually ended up handling a substantial number of cases which were not likely to be opposed, particularly divorces and bankruptcies, knowing that at least with these, he could not lose.

Four years ago, OEO officials estimated that approximately 70 per cent of the legal aid organizations in the country bore a depressing resemblance to the situation described. Now that more than \$ 90 million of Federal funds have been injected into legal aid programs, the quality of service has improved considerably, and, again according to the same OEO people, not more than 20 per cent of the country's programs are considered to be as bad as the old legal aid programs. An additional 45 per cent, however,

are still adjudged to be providing professional services which are less than satisfactory, and only 20 to 25 programs in the country are now furnishing "high quality" representation.

According to OEO evaluations made in 1967 and 1968, one of those high quality programs was CRLA. In December, 1968, in fact, the National Advisory Committee on Legal Services presented CRLA with an award for being the best program in the country with seven or more attorneys. San Francisco, Cleveland and Dallas were also given special mention by the Committee. Since we doubt whether anyone could say with assurance that CRLA was superior to these other programs, the Committee's award should be viewed as a recognition of special merit which, in the next few years, will be extended to various programs deserving particular recognition.

From the beginning of CRLA in 1966, one of the stated goals of the program has been to furnish clients the same quality of professional advice which is dispensed by good private law firms. In monitoring the quality of the work done by our attorneys, as we have done since June, 1967, we ask our attorneys at least seven questions. Do they limit the case load to insure enough time to undertake in-depth interviews, complete factual investigations, legal research, discovery, preparation of court pleadings and such other work as each case may require? Do they provide diff-

erent kinds of services according to the different needs of the clients? Are they able to satisfactorily settle cases without going through time-consuming trials? Do they render service quickly to clients? When necessary, are they willing to go to court? Do they, in fact, adequately prepare their court cases? Do they win a substantial portion of the contested cases which they handle?

The answers to these questions which we have received are revealing. Throughout 1968 and 1969, most CRLA attorneys maintained no more than 50 open files at any one time. Largely as a result of this restriction, the number of cases closed by CRLA attorneys during any quarter of the year was never less than 90 per cent of the number of cases accepted during any quarter -- indicating a steady turnover of cases. Of the non-litigation matters handled by CRLA attorneys, 16 per cent were resolved on the same day that the client came to the office with his problem, 9 per cent within one week, 12 per cent within one month, 38 per cent within three months, 12 per cent within six months, and 8 per cent within one year.

According to surveys made in two CRLA regional offices, a minimum of thirty minutes was spent interviewing clients in approximately 70 per cent of the problems accepted by CRLA attorneys. Written reports pertaining to factual investigation were prepared by attorneys or investigators in 55 per cent of the cases handled, and legal

memoranda were prepared for 35 per cent of the cases. For every hour which CRLA attorneys spent in interviewing clients, 2 hours were spent doing factual investigation and preparing documents, 1.5 hours in legal research and a third of an hour in court proceedings.

Seventy per cent of the matters undertaken by CRLA attorneys were resolved short of going to court or administrative hearings, and 78 per cent of these in a manner satisfactory to the interests of the clients. Of the 790 times that CRLA attorneys went to court during the last year, interrogatories or depositions or both were taken on more than 91 occasions or 12 per cent of the time, and a total of \$12,400 was spent in depositions alone. CRLA attorneys represented plaintiffs in 491 of these actions, and defendants in the remaining 298 actions. In 97 of the latter cases, cross-complaints and counterclaims were filed.

In the 396 court cases in which decisions were rendered during the year, CRLA clients received favorable judgments on 330 occasions, or 83 per cent of the time. Of these 790 cases filed during the year, approximately 560 were contested, and 230 were uncontested. Of the 66 unfavorable decisions received, 13 were appealed. One hundred sixty-five actions were settled, about 122 of which, or 74 per cent, on terms favorable to CRLA clients. Two hundred, twenty-eight matters were pending at the end of the reporting

period.

CRLA attorneys also filed approximately 4,300 actions with administrative bodies, of which about 1,600 were decided or acted upon by the end of the year. In approximately 1,450 of these 1,600 matters, or 90 per cent, determinations were reached which were favorable to CRLA clients. In addition, about 1,900 favorable settlements were reached out of 2,005 settlements entered into. About 695 administrative matters were pending at the end of the year.

Thus, out of a total of 3,396 court and administrative decisions rendered during the year, CRLA clients were ultimately upheld in approximately 3,060 cases, or 89 per cent of the time. And out of a total of 2,170 settlements reached in court and administrative cases, favorable resolutions were obtained in 2,022 cases, or 92 per cent of the time.

The figures on the performance of CRLA attorneys stand in sharp contrast to those of some other legal services programs surveyed. The Orange County program reported that each of its four attorneys maintained an average of 393 pending cases at one time and during at least one quarterly period, accepted four times the number of cases they closed, and worked on six times the number of cases they completed. The total number of hours spent by the Orange County attorneys interviewing clients was 17 per cent more than the number of hours spent in working on clients' problems, two times the number of hours which they spent in court, and five times the number of

hours devoted to legal research, which may explain why they were able to complete so few of the cases which they accepted.

The Seattle legal services reported a number of pending cases which was three times the number of cases closed during a particular quarterly period. Portland, Oregon attorneys averaged over 200 pending cases apiece, while three Stockton, California attorneys maintained an average of 233 pending cases apiece.

Two of the ten programs telephoned took no depositions in the past year; and six programs took not more than three apiece, despite the fact that each of these programs handled at least 200 cases in court, and two programs handled more than 500.^{17/}

^{17/} This information is based on telephone interviews made by Sandra Rogers with the heads of the following programs: Brett Dorian, Fresno County Legal Services; Ben Barton, Napa County Legal Assistance Agency; Joseph Amato, Legal Aid Society of Orange County; David Blicher, Sacramento Legal Aid Society; Walter Hastings, Legal Aid Society of San Joaquin County; Bruce Bailey, Legal Aid Society of San Mateo County; James Popin, Legal Aid Society of Santa Cruz County; Earl Dunn, Tulare County Legal Services Association; Legal Service Center of Ventura County; San Francisco Neighborhood Legal Assistance Foundation.

VIII.

How the attorneys handle their cases is primarily a professional question which attorneys must decide. What cases they take, who they serve, where they put their offices, and what kind of program they participate in are policy questions which have to be considered by the people served by the CRLA program. But who are they? There are more than 550,000 people in rural California who are potential clients, another 248,000 who make between \$3,000 and \$4,000 a year and often can't afford a private lawyer, and at least 260 organizations that they belong to. CRLA reserves fourteen positions on its main policy making body, the Board of Trustees, for people with low-incomes, and sets aside another 150-odd positions on local advisory committees, which are supposed to advise CRLA regional attorneys about what they feel should be done. This totals nearly 160 trustees and advisors, out of a total client population of more than 1,000,000.

Obviously these low-income trustees and advisors can't be considered formal representatives of California's rural poor. As representatives of organizations composed of a good many poor people (and we are speaking of the Community Service Organization, the Mexican-American Political Association and the United Farm Workers Organizing Committee,

for example) or as low-income people themselves, however, they can speak with some authority about what our clients want and need in the way of a legal services program. To the extent that anyone knows, these people should -- and so we have asked them. In March 1969, the Trustees and representatives of local advisory committees met together to evaluate CRLA's past performance and to make recommendations for its future program. In August and September 1969, they held more meetings to consider these same issues. Here is what the people say they want:

Practically everyone is critical of the provision in the Economic Opportunity Act which bars legal services attorneys who are funded by the Office of Economic Opportunity from handling criminal cases. Some rural counties still do not have public defenders, our advisors say, and in other counties which do, the public defenders are badly overworked. Therefore, they ask CRLA to do all it can to lift the prohibition.

The chairmen of four advisory committees are critical of CRLA offices for not getting more involved in community organizing. At the March meeting, people said that CRLA should do more to fight the "welfare establishment," should investigate pesticide poisonings of farm workers, should form welfare rights organizations, should assist the people in lobbying in Sacramento, should focus more on the

employment problems of poor people, "since a decent job is important for a man's feeling of self-worth and his ability to provide himself and his family with the necessities of life," and should give "top priority . . . to cases involving farm workers in the field." This August, advisory committees drafted more detailed priorities for CRLA attorneys. The Gilroy advisory committee wants its local CRLA attorneys "to eliminate tracking and misplacement of Chicanos in classes for the mentally retarded," to encourage the hiring of more Spanish-speaking teachers and bi-lingual counsellors to "check why kids aren't coming to school." The Madera committee requests its attorneys "to improve the education that our children are receiving in the Madera schools" and to handle more juvenile cases. The Modesto committee asks its attorneys "to bring class actions which will improve the housing situation in the area," "which will discourage the fraudulent practices of salesmen, repairmen, etc., who take advantage of Spanish-speaking and low-income people," and which will require "federal, state and local agencies to retrain persons displaced by mechanization. . . ." The McFarland committee feels its attorneys should handle more welfare cases while the Marysville committee wants more domestic relations cases.

The Gilroy and El Centro advisory committees feel that the location of the CRLA offices in their area are inconvenient, Gilroy because it is on the second floor of an office building and has to be reached by a steep set of

stairs, and El Centro because it is situated in a downtown business area.

Seven advisory committees feel they should include more members, although three committees recommend that people be dropped from the advisory committee roles if they miss more than a certain number of meetings. The Madera advisory committee, for example, feels that poor people from neighboring Fresno County should be invited to participate.

All of the advisory committees say that their offices needed at least one more attorney apiece. The Gilroy advisory committee wants more attorneys to staff a permanent office in Hollister in San Benito County; the Madera committee wants attorneys for Chowchilla and Firebaugh in Fresno County; the Marysville committee wants attorneys for Butte County; the Modesto committee wants attorneys for Newman and Crows Landing; the Santa Maria committee wants attorneys for San Luis Obispo; and the Santa Rosa committee wants attorneys for Geyserville, Jenner and Sonoma.

The Marysville and El Centro committees both feel that CRLA attorneys are spending too much time on cases which benefit only one individual and not enough working with groups of people. Madera says, "We feel that the staff should concentrate their efforts on cases that effect large numbers of people, rather than get bogged down with service cases. However, it is important that individuals needing

help not be neglected." McFarland feels that the office staff "should spend 60 to 70 per cent of its time on service cases and 30 to 40 per cent of its time on cases which effect large numbers of people." Modesto says: "In the event the service cases become so great that they are unable to bring the cases we have described as important, they should advise us and we will decide at that time whether to restrict further the service cases or whether to advise them to postpone . . . the bringing of certain cases we have described as important. We understand that numerically service cases constitute at least 90 to 95 per cent of the matters handled by the attorneys. It might be appropriate under such circumstances for the attorneys to spend half of their time on service cases and half of their time on class actions. This 50-50 allocation is noted only as a possibility. . . ." Four different advisory committees feel that CRLA people should take more trouble to tell the community how many cases they can handle, and what kinds. Six advisory committees want a special newsletter circulated among the committees to let them know what is going on.

IX.

However much we talk about the help CRLA attorneys provide people from time to time, we cannot forget that the problems of rural poverty which we began with almost four years ago are still with us. Workers are being replaced by machines. Welfare recipients are being shunted off welfare rolls in order to appease unhappy taxpayers. Approximately 80 per cent of the growers in the state are still in violation of basic field sanitation regulations. Farm work has an occupational disease rate which is twice as high as that of any other industry. The Agricultural Extension Service of the University of California provides multitudinous services to farmers, but not to farm workers. Farm workers are still not covered by the National Labor Relations Act and are not eligible to receive unemployment compensation. At least 150,000 wetbacks are working illegally in the state. Bilingual children are forgotten about in many rural schools. Agribusiness corporations continue to grow in size while small farmers go out of business. People continue to crowd into the cities in disturbing numbers.

The problems of the farm worker, of the individual consumer, of the senior citizen, of the small farmer do not stem initially from a lack of legal services or of other public services. They do not result from bad breeding or

lack of intelligence or "cultural deprivation." They are not even a consequence of a lack of education, which some people still see as a panacea for everything. The problems of the farm worker, the consumer, the small farmer stem originally from a lack of bargaining power, power to demand a fair share of the resources of this society.

This is as true of the legal system as it is of any other system in our society. If people are to receive fair treatment from the courts, the legislature, the administrative agencies, and from other private citizens and groups, they must have power, power to demand of employers that they respect health and safety laws, power to demand of public officials that they will prosecute employers employing wetbacks, power to demand of legislators that they will pass favorable laws. Without such power, they will experience more of the situation which we have now, where powerlessness breeds injustice, weakness invites others to violate the law, and people who are victims are continually victimized.

THOSE LEFT BEHIND

By Sheldon Greene, General Counsel,
California Rural Legal Assistance Program

In 1950 Americans paid 8.1 billion dollars for liquor and 10.5 billion for education...

In 1967 5.3 million families, 21 million people were below the poverty level with incomes under 3,500 per year. 29 million single persons earned less than 1,605. dollars. New Republic, Feb. 1, 1969.

8-1/2 million Americans received public assistance. Another 18 million Americans are unassisted by welfare but are at the poverty level.

"We will press urgently forward...(in pursuing the goals of) full employment, better housing, excellence in education; in rebuilding our cities and improving our rural areas..."¹

Equality before the law, the pronounced goal of legal service programs, is an abstraction. Policemen, administrators, jurists, being human are incapable of the detachment necessary for pure impartiality. Being human, their judgments are replete with the sets, attitudes, biases and political expediencies of time, place and personality.

The poor go into any hassle with the law with two strikes against them. Our success-oriented American society regards poverty with something less than Christian charity.

¹Inaugural Address of President Nixon

Since poverty is contrary to the material success orientation of our culture, the poor are considered unfit and lazy, if not stupid and dishonest. This latent negative attitude is compounded by the coincidence of poverty and minority status, calling into play attitudes of racial or ethnic inferiority, not to mention problems of communication. While a low-income person dealing with a policeman or a magistrate is treated politely or patronizingly, he still receives a smaller quantum of equity than a well-dressed, clean-shaven representative of a solid middle class background. A policeman taking an accident report from a lower income person is apt to ignore or minimize material facts and find him at fault. A justice of the peace, who will release a fellow Kiwanian on his own recognizance, will deny that right to a low-income person with equal longevity in the community. As a witness or a defendant the lower income person's credibility in the eye of the judge and the jury is generally lower than that of the finance company manager and the policeman. At the worst, the poor are victims of borderline extortion by lawyers and petty judges. One small town justice of the peace also owned the only finance company in town and the only bail bond agency. Low-income traffic offenders, always in the majority, were free to borrow the money for the fine.

JUSTICE BY DEFAULT

A cause of inequality equal to the negative stereotype in effect and more easily remedied is simply that the low-income person's historical relationship to the law has been entirely defensive. He is the traditional recipient of the traffic citation, summons, wage attachment, repossession, and eviction notice. His remedy was default and his rights atrophied from disuse. The low-income litigant could not afford the luxury of plaintiff law and since his defenses were infrequently asserted, their existence was often forgotten. A qualified creditor's right soon became routine and absolute.

When legal services were first introduced to rural areas, the bar on occasion acted as if the poor had even lost the right to make an affirmative appearance. The submission of a lengthy series of interrogatories to the creditor in response to a wage attachment occasionally prompted the creditor's attorney to donate his services gratis to equalize the advantage that the indigent defendant had in the person of a free legal service lawyer. So completely had the values of some lawyers been eroded by the failure of the poor to assert their statutory and substantive rights that it was not uncommon in California for law firms to process default judgments in a jurisdiction some distance from the actual situs of the transaction in order to assure themselves of a default judgment.

The presumption underlying these irrational reactions is that access to the courts is a commodity and that a person who doesn't pay for it is, most charitably, a licensee or a trespasser. The insertion of a virtual handful of inexperienced poverty lawyers between the "establishment" and thirty to sixty million poor Americans is both a creditable and dramatic departure from a deplorable failure of the law to accommodate the large segment of our population, yet is still like treating a hundred headaches with a half dozen aspirin. Since their inception, legal service programs have been virtually swamped with potential litigants. Moreover, the applicants themselves represent only a fraction of those eligible and in need of services since the majority of the poor are so insulated from society's institutions as to be unaware of the availability of legal assistance, while others are too apathetic to initiate action.

TOO MUCH TO DO

The poor who seek legal aid come with problems which are immediate and important to them individually but which will not materially change their circumstances in that their solution will not provide a better job, better housing, make the fire department come any sooner, or increase access to a doctor. Every legal services lawyer is exposed to a steady stream of applicants, each of whom

has a problem which merits the lawyer's attention. Most problems can be resolved with a normal expenditure of time, a telephone call or a letter. The smaller proportion requires the filing of a lawsuit, protracted negotiations or extensive investigation. Still others draw on intolerably, sapping the attorney's time and increasing his frustration level. In a relatively short period of time a legal service attorney who accepts clients indiscriminately finds himself working fourteen hours per day and accumulating a growing file of matters forgotten, unattended to, or superficially dismissed.

A classic example of this scatter-shot approach to legal services exists in a wealthy rural California county of 180,000; 40 percent of which are low income. The legally indigent are served by two public defenders who provide services in 7 justice courts, 3 municipal courts and 4 superior courts. Because of the impossibility of accommodating all that require their attention, the attorneys do little more than browbeat a client into entering a plea or make a superficial appearance based upon a hasty review of the police report.

On the civil side, legal service programs have too often either circumstantially or out of conviction fallen into the same pattern of service. Some prominent programs are philosophically committed to serving everyone who comes in the door. Policy makers derive a certain masochistic

satisfaction in confessing that their staffs are worked to the point of inefficiency and exhaustion. Some will even admit that their services, except where matters are routinized and virtually automated, are low quality and that the attorneys have neither the time nor the energy to pursue matters of community-wide significance susceptible of a judicial solution.

These weaknesses could possibly be accepted if the goal of serving everyone could thereby be reached, but in no case does the open door achieve that result. To the contrary, client intake is often limited by a number of contradictory but inadequate devices such as restricting the hours the office is open, and on occasion closing down services entirely for a week so the staff can devote itself exclusively to the backlog. In both cases the determination of which client is served and which is not, and of course the allocation of the attorney's time to a specific problem, is arbitrary and circumstantial. Often clients in need of emergency service are arbitrarily deprived of assistance. It is unnecessary to recount specific illustrations of the total breakdown of legal service offices which has resulted when this system is pursued. They are available in OEO files.

FOCUS AND IMPACT

If a prime purpose of the Economic Opportunity program is to effectively utilize government funds to

materially alter the circumstances which perpetuate poverty, the expenditure of the limited funds available to provide legal services is wasteful and ineffectual unless a substantial portion of those funds pays for legal action directed at the causes rather than the varied symptoms of poverty. Maximizing the impact of action directed at the causes of poverty necessitates analysis of problem areas, the development of expertise, the formation of programs within projects specializing in specific substantive areas or socio-economic problems, the preparation of legal attacks in key areas in which low-income rights are found to be deficient, and finally, the extension of that campaign to any arena in which the lawyer can effectively function including courts, public agencies, and legislative bodies.

To maximize its impact on basic problems of poverty, California Rural Legal Assistance employs a balanced selectivity in caseload composition. Several equitable devices are employed by local offices to limit and define caseload. Local advisory committees representing the client community are asked to assist the local office in formulating a set of priorities or guidelines for evaluating the importance of types of problems. Similarly, guidelines are prepared reflecting negative priorities; categories which are deemed to be of little importance to the client community. The application of such priorities usually results in the restriction of intake of domestic relations cases and bankruptcies, the most common sources of orthodox service work. Arrangements are generally made with members of the bar,

who absorb rejected cases. Similarly, intake of new clients is restricted to the number of cases that each attorney can reasonably absorb into his ongoing caseload. The limitation on the number of client interviews per week, of course, is qualified since an attorney is always available for consultation and service in the event of an emergency situation.

The initial gain from this procedure of limiting the number of clients served is an increase in the quality of legal service in the traditional matters accepted by the office. Attorneys have the opportunity to deviate from routine remedies and adequately prepare pleadings, brief questions of law, thoroughly utilize time-consuming discovery tools. The result is a substantial increase in the standard of service, and the leverage which the office enjoys in its relations with fellow attorneys in concluding conflicts on terms favorable to the client.

In connection with the establishment of priorities and selective caseloads, CRLA attorneys often attempt to apply the role of the corporate attorney, extending to the client community the same preventive and palliative law services which business lawyers traditionally afford to ongoing clients. A corporate lawyer has the responsibility to screen new developments in the law and new policies of administrative agencies which effect his client's interest and to counsel the corporation as to the utility of modification of corporate policy, initiation of litigation,

and other steps to avoid the adverse effects of action taken by competitors, banking institutions and government. It is the corporation attorney's duty to apprise his client of legal matters which affect him of which he is not aware, and to counsel him to take action in his best interest. Similarly, the poverty lawyer has the obligation to evaluate areas in which his client's rights are being disregarded, to counsel him to seek changes in the law, and to engage in litigation to amplify his rights.

It is a valuable off-shoot of resulting major institutional litigation that the poor learn that the courts and the legislative corridors are an avenue for beneficial change in their interest, at their initiation, and that they possess the means to attain a significant economic or social goal through the law. Last year CRLA obtained a Writ of Mandate against the California Industrial Welfare Department requiring the retroactive enforcement of the new minimum wage for agriculture which had been abated pending final disposition of grower-commenced litigation challenging the validity of the order. The Writ granted by the California Court of Appeals was sustained by the California Supreme Court in a matter of months facilitating payments by growers of up to \$800,000 in retroactive wages to possibly 20,000 female farm workers. Nearly \$400,000 of this amount cleared through the California Industrial Welfare Division for disbursement to farm workers. Ironically, final resolu-

tion of the new wage order came a full nine months ahead of final disposition of the protracted litigation challenging the legality of the 1963 minimum wage. Thousands of farm workers received with this case a tangible demonstration of the efficacy of the judicial process.

REGIONAL PROBLEMS, REGIONAL REMEDIES

The foundations of rural poverty are regional, if not nation-wide, and CRLA being a statewide organization has greater opportunities for a coordinated broadside attack on regional problems basic to the rural poor. Concerns such as labor and education are made the subject of inter-office task forces, which pool resources and coordinate effort to avoid duplication and increase the quality of overall performance.

Currently, task forces are functioning in several areas including education, immigration and working conditions. In immigration, for example, five lawsuits have recently been filed in various parts of the state against growers employing illegal entrants but refusing to employ qualified domestic farm workers. The suits endeavor to establish grower responsibility for damages to displaced farm workers driven to depend on welfare as an alternative to employment. They employ both statutory and equitable principles previously applied in analogous areas pertinent to this fact situation. One court has already ruled that farm

workers have a right to sue growers employing wetbacks under the unfair business practice statute. In another arena, CRLA attorneys are working with Congressional staff members in the preparation of statutory modifications to the immigration laws to discourage the widespread use of illegal entrants in agricultural and unskilled employment.

THE CORPORATE MODEL

The poor are frustrated in their contact with the law throughout the legal spectrum. Legislation undertaken to benefit the poor is either not implemented at all or warped at the administrative level so as to negate or minimize the benefit accruing to the low-income class. Similarly, substantive rights deriving from litigation have been negated through legislative action prompted by interest groups affected. Since the poor, and for that matter the middle income group, have no ongoing presence in legislative bodies, the product of legislatures is often heavily weighted in favor of economic interests which carry out intensive legislative advocacy programs. An illustration of legislation which resulted from intensive lobbying by the National Rifle Association is a recent California statute which was calculated to deprive the City of San Francisco of the right to enact local gun control laws. The same session, responding to another private interest, contradicted itself in according to municipalities the right to regulate topless nightclubs. The only consistency in these two bills was

effective legislative advocacy.

Accordingly, extending to the poor the same level of legal services available to business necessitates more than an occasional amateurish appearance at a legislative committee session to give testimony against a particular bill. Recognizing that the Legislature is often the Court of Last Resort in significant issues, CRLA initiated a legislative advocacy office utilizing the services of two attorneys, each of whom had past experience in working with the Legislature.

Legal services attorneys, even though skilled in legislative advocacy, cannot hope to initially win many battles, particularly the big ones against powerful, deeply entrenched lobbies. However, the presence of the professional advocate consistently representing the interest of the poor, and similarly the consumer, both sensitizes legislators to their responsibilities to this group, and on occasion provides information and support which shifts the balance in favor of the low-income community.

Recently, the Legislature passed a law requiring counties to impound the personal property of a party evicted from a dwelling at the expense of the county. If implemented throughout California, the provision would have worked a hardship on low-income tenants and would have cost California taxpayers millions of dollars in county administrative costs. CRLA lawyers challenged the provision and two jurisdictions

finding it to be unconstitutional, enjoined its enforcement. Real estate interests returned to the Legislature with the proposal tailored to contain a similar object, circumventing the constitutional objections. CRLA legislative advocates followed up in the committee considering the bill and helped to kill it, to the surprise of the real estate interests.

Administrative agencies are often rightfully criticized for subordinating the interests of the general public, including the poor, to those of the regulated industries. The romance of the Federal Food and Drug Administration with the pharmaceutical industry, resulting in the introduction on the market of more than one untried, if not deleterious drug, is an example. The blame for this gradual perversion of purpose however lies not only with well-intentioned administrators, but is also due to the failure of the public to treat the agency as a forum, to hold it accountable to the public for its actions and require more than formalistic ex post facto public disclosure. It is not surprising that the agencies are often seduced, since the industry which they were established to watch is usually the only attractive suitor.

More than one cause of poverty is partially attributable to the failure of an administrative agency to engage in vigorous law enforcement. The Justice Department fails to take the initiative to control the illegal entry

of alien workers displacing domestic workers. The Department of Agriculture ignores legislative intent in operating food programs, minimizing the access of beneficiaries to surplus foods and school lunches. The Labor Department lacks sufficient investigators to take the initiative in wage and hour enforcement, relying rather on sporadic complaints. Slums fester although the local building department lacks the resources for consistent housing code enforcement. Urban renewal only half succeeds because insufficient attention is given to the relocation of displaced residents.

Accordingly, a high percentage of impact litigation must be against administrative agencies reflecting the intensity of involvement of agency inaction and malfeasance in the conditions of poverty.

In that CRLA often focuses on the role of the administrative agencies in aborting valuable rights, it is engaging in a process of exposing public officials to their basic obligation and accountability to the public. In this regard, legal services to the extent that they have entered this field are carrying a load for the silent majority as well as the poor, neither of whom have had an effective consistent professional vehicle to maintain on-going advocacy relationship with pertinent administrative agencies.

Judges, like administrative agencies, lose

perspective through repeated exposure to one point of view. The judge who spends ten years on the bench processing low-income default judgments and enforcing non-support decrees can't help but formulate some definite ideas about the financial irresponsibility of the poor, although the statistics of finance companies prove that the poor are more dependable than their middle class counterparts. It is no wonder that judges who are first exposed to legal defenses in creditor situations often tend to regard them with skepticism. Judges, similarly, are prone to condescendingly regard affirmative litigation initiated on behalf of the poor as test cases. Critics of legal services deprecatingly use this label to characterize litigant's rights as an attempt to legislate or interject political issues into the judicial system. This label camouflages an unexpressed attitude that the poor should not take up the time of the courts with controversial and potentially embarrassing litigation. The same critics would have no qualifications about a dispute between a steel company and the federal government interpreting an amendment to the Internal Revenue Code. Government and industry are continually redefining the limits of statutes and regulations and clarifying ambiguities in decisions through litigation, a function considered both reasonable and necessary. Judges, like administrators, can and are being sensitized by increasing exposure to significant litigation commenced on behalf of

the poor, and the credibility of suits involving the assertion of dormant rights extends as the body of case-made poverty law grows.

STRAIGHT LEGAL SERVICES

CRLA is considered by many to be the representative of the view that legal service attorneys are unable to assist everyone, and should therefore devote their exclusive attention to the so-called law reform cases, ignoring the day-to-day needs of the client community. The unusual attention given by news media to cases having significant public interest has fed that image. It is a fact, however, that the majority of an attorney's time is devoted to matters affecting one or a few clients of a traditional nature.

The organization however strives to handle individual matters so as to maximize the impact of the case on relevant problems of the low income community. An illustration of this point of view is an attachment case brought to a CRLA attorney with little prior experience. A welfare recipient's pickup truck used by him to haul scrap was attached by a general creditor. The client had hoped to use the scrap collection as a means of ultimately becoming independent of public assistance. The collection agency attempting the attachment had the reputation of being the most unethical in the community, engaging with impunity in indefensible practices. The young attorney

sought to vacate the attachment on grounds the truck was exempt as a tool of the client's trade. When the Superior Court refused to hear an appeal from the adverse finding of the Justice Court, the attorney successfully obtained a Writ of Mandate from the Court of Appeal, establishing for the first time in California a definite right of appeal in forma pauperis from a Justice Court to the Superior Court. Needless to say the case involved laborious research and brief writing as well as even a trip into the hills to interview people who had sold scrap to the defendant. The process also provided him with a rapid growth in his skills as a litigating advocate.

His next significant case grew out of a complaint by a farm worker that an employer had failed to provide sanitary facilities for field workers. An extensive factual investigation, research, brief writing and argument resulted in a temporary restraining order, a preliminary injunction and a stipulated decree establishing the legal responsibility of the grower for the failure of a labor contractor to comply with pertinent labor laws. The farm workers who joined in the suit also received punitive damages which the grower agreed to pay in lieu of going to court. The suit, widely publicized, stimulated administrative agencies usually lethargic in this area to commence enforcement disclosing numerous field sanitation violations and culminating in the rare criminal prosecution of a labor

contractor for Labor Code violations. Growers' compliance with field sanitation standards increased substantially in the region affected by this suit.

Neither case would have been possible had the local CRLA office not practiced selective caseload restriction enabling the attorney to devote weeks to preparation and development of these cases. In both instances the time expended returned a benefit to the low-income community which far exceeded the disposition of a myriad of isolated small disputes.

Through selective caseload composition, CRLA is attempting to substitute for the default and defensive approach to poverty law an assertive policy in which certain low income clients affirmatively seek to establish rights and favorably define the duties and obligations of their adversaries; the landlords, employers, creditors and public officials.

Effective advocacy for the poor in high impact situations is more often than not beneficial to the middle income community as well. A CRLA regional attorney recently obtained an injunction declaring unconstitutional a provision of the California Constitution which required a two-thirds vote for the passage of a school bond issue on grounds that it conflicted with the "one-man, one vote" principal recently enunciated by the United States Supreme Court. The case involved a school bond proposal defeated, although

56% of the electorate had supported the bond issue. On appeal CRLA will be joined by the conservative League of California Cities. CRLA has been supported in past suits by the Attorney General of the State of California, the State Department of Education, and in one critical negotiation involving the fate of day care centers for the children of migrant farm workers, by a growers harvester committee. A preponderance of the major litigation undertaken by the program serves the goals of conservatives in that it is calculated to alleviate dependence on public assistance and increase the self-sufficiency of low-income workers by placing the burden of their support on the employer rather than the taxpayer.

While prejudice undermining equality cannot be readily eliminated, the maximization of impact occurring from litigation and negotiation, the use of every forum available to the lawyer to advance his clients' interests tends to reduce that factor of inequality which has resulted from the simple failure of the poor to use the judicial and legislative process.

CRLA attorneys can cite concrete and substantial instances in which administrative agencies have initiated enforcement in long dormant areas of their responsibility following litigation and in which judges initially skeptical of low-income sponsored litigation have developed greater

willingness to entertain such suits. Finally, broad-based success in the courts, agencies and even the legislature have shown at least some of the poor that in a democracy power can be hoarded by a few but not monopolized.

Poverty is not just a lack of money
or education;
it is racial discrimination,
it is cultural difference,
it is a state of mind.
Most of all, it is a position of
non-participation,
the symptoms of which are apathy,
fear,
lack of organization and involvement,
divisiveness,
resentment.
It is self-denigration.

The poor see the law and lawyers
as oppressors.
They come in contact with lawyers
when they are being sued,
when they have been arrested,
or when their children are in trouble.
The poor see the law as benefitting
those with money
and with power.
The poor have little faith that the
agents of the law
—the judges, police, lawyers—
will protect them,
the poor.
The poor see laws meant
for their benefit ignored
and unenforced.

Most of us see a different world—
Lawyers are officers of the court;
the judges (who sit on courts)
uphold the law.
The policemen enforce the law.
The law is meant to be a
protector of the weak
and of the common good.
Society cannot exist without laws
and without the enforcers of these laws
including lawyers.

California Rural Legal Assistance . . .

The poor whom we have represented
have seen that the law can be a friend;
that the law can be a vehicle
for protecting the rights
of the poor;
that the laws meant for the
protection of the poor
can be enforced;
that the powerful, too,
can be accountable.

These insights can be the beginning
of hope among the poor
that the law and lawyers
will serve man
irrespective of station or wealth.

Cruz Reynoso
Director
California Rural Legal Assistance

A few observations



A perspective of the law

"Growers and contractors should be made to have sanitary facilities out in the field for the workers. If there is such a law that these facilities have to be provided, I can't understand what the hang-up is. If it's a law, it's a law. And it should be obeyed. CRLA should help here. Mostly the law is to protect the growers and the rich. Most of the time, when a farm worker is in contact with the law it is because he is in trouble with the law, or the law is being used against him. And that isn't right."

Rosendo Montana, Farm Worker
McFarland, Rose Capital of the World.

California has one of the most extensive series of laws designed to protect the health and safety of farm workers in the nation. Government agencies charged with their enforcement have been derelict in their enforcement duties. CRLA has brought a number of suits, only some of which have been successful, seeking to compel the government to apply the standards set by the law to the rich as well as the poor.

A perspective of dependency

"I have worked for the same employer for more than a year. He grows artichokes, and I have no complaint with him. He is fair with me. Last year because of the rains I could not find work for about three months during the winter. This year when the rains come, I guess I won't be able to find work again. I don't like to have to get help from welfare. I want my self respect. I need unemployment insurance before the rains come so that I can have enough to give food and shelter to my eight children."

Antonio Dorado, Farm Worker
Castroville, Artichoke Capital of the World.

Every major occupational group but farm workers is covered by unemployment insurance. CRLA has a pending case seeking to provide this basic protection to every American farm worker.

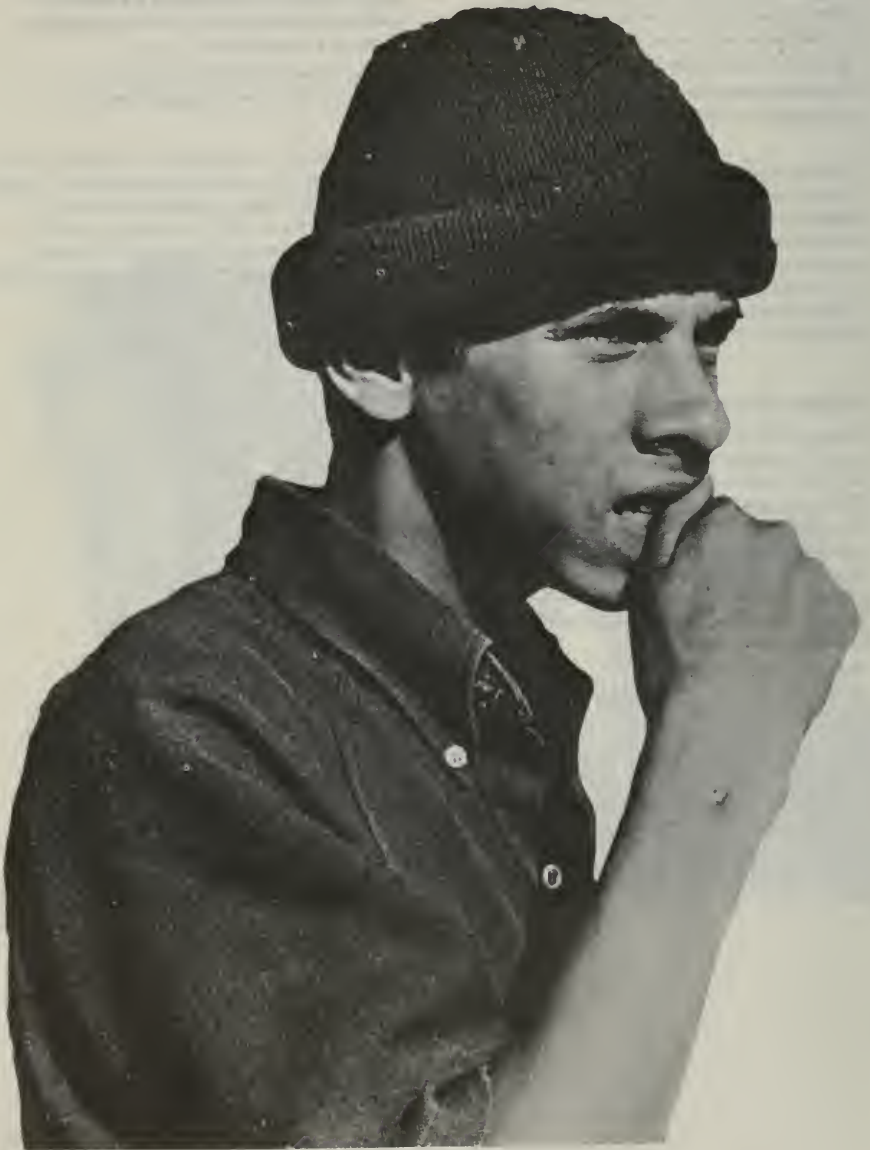
A perspective on the war on poverty

"The government has a lot of programs, like the War on Poverty. I do believe that they are going wrong because they are trying to cure poverty without getting rid of the thing that causes poverty. Can you see what I mean? Like you're trying to cure cancer with an aspirin. I think that one of the biggest problems is we got to take into consideration the people as a people, and we should try to teach the people their rights as a human being."

Hector Reyes, Community Organizer
Imperial County, Carrot Capital of the World.

Most Federally-funded programs perpetuate dependence rather than encourage independence. Although most of CRLA's cases are service-oriented and designed solely to treat the symptoms of poverty, a number of its class action cases seek to deal with the causes of poverty. In addition, it has helped design various farm worker controlled corporations to produce housing and jobs.

Characteristic problems encountered by CRLA



Rural poor need better educational opportunities.

College for farm workers. In Gonzales, California, in a school district with a 50% student enrollment of Mexican descent, a young Mexican-American National Teacher Corps teacher was fired, and her husband's job as a school-home liaison representative eliminated, when she helped local high school students form a chapter of the Mexican-American Youth Association (MAYA). The primary function of MAYA was to encourage in Mexican-American students a pride in their cultural heritage, and to stimulate interest in further education among some who previously had accepted farm work as an end in itself. In part, the program attempted to awaken the students' interest in professional careers, such as medicine and law, and at least to encourage them to secure their high school diplomas. As a result of this dual emphasis, farm worker parents, who had always assumed that their children would be farm workers by the age of 17, began to encourage them to apply for college. A record number of Mexican-American students (35) thereafter applied under special minority-group programs at several local colleges. CRLA, after failing to convince the local school board to reinstate the fired teachers, was successful in securing a Federal Court order of temporary reinstatement. CRLA was joined in this suit by the Mexican-American Legal Defense and Educational Fund. (*Alvarez v. Force*, J. S. District Court for Northern California, No. 51089)

Equal education for rural poor. Although an equal education for all children is guaranteed by California's Constitution, local taxpayers are forced to absorb 70% of the costs of this State-guaranteed education without regard to their financial ability. Beverly Hills taxpayers therefore, are able to provide their children with free musical instruments, intensive medical and psychiatric care, and remedial education, while rural taxpayers do not even have sufficient funds to secure an adequate number of teachers or to provide children with school transportation even when they reside three hours walking distance (10 miles) from the school. CRLA filed suit to alter this by requiring a more equitable rate of taxation and distribution of such sums throughout the state. However, as the result of a recent U. S. Supreme Court case, it dismissed its lawsuit *without* achieving the desired result. The Governor of California has recently proposed a plan whereby some of these tax inequities will be eliminated. (*Silva v. Atascadero*, California Superior Court, San Francisco County, No. 595954)

Majority rule on school facilities. California school children are denied adequate school facilities unless their parents can convince two-thirds of the voters in the school district to approve such facilities. As a result of this requirement, the will of the majority of voters favoring additional school facilities has been frustrated in 155 out of 218 instances in the last two years. In reliance on the Supreme Court's "one man, one vote" principle, CRLA brought suit seeking to prevent a small minority from frustrating the educational needs as determined by the majority. The court recently ruled in favor of CRLA. (*Larez v. Shannon*, California Superior Court, Sutter County, No. 2657)



Farm worker failure to participate in the community stems from a lack of stable, adequate employment.

Minimum wage. Farm workers are condemned to poverty and public dependence upon welfare institutions as a result of hourly wages which are less than half the prevailing industrial average. The State of California attempted to partially close this gap by raising the minimum wage for women in agriculture to \$1.65. Industry-wide pressure from agricultural interests caused the State to suspend enforcement. CRLA, in a legal action affirmed by the California Supreme Court and joined in by the State Attorney General, had the legality of the minimum wage upheld and enforcement immediately commenced. As a result, 20,000 farm workers received approximately \$800 thousand dollars in retroactive benefits, and payrolls for farm workers are expected to increase by at least \$4 million in the year 1969. (*Rivera v. Division of Industrial Welfare*, California Court of Appeals, 3 Civil 12023)

Illegal foreign competition. Virtually every occupational group has restrictions, either by statute or professional code, on the number of persons who can practice their occupation. Farm workers are not only denied such benefits, but are faced with a continuous supply of cheap foreign labor competition. A number

of CRLA lawsuits have sought to prevent illegal and unfair foreign competition without obstructing growers from securing an adequate supply of labor. Until CRLA brought a successful lawsuit on September 8, 1967, hundreds of thousands of foreign laborers (braceros) had been imported into California each year to compete with local farm workers. As a result, American citizens were forced upon welfare and deprived of work. Subsequent to CRLA's success in Federal Court, the U. S. Department of Labor on September 11, 1967, entered into a formal agreement with CRLA in which for the first time domestic farm workers were given a voice in determining future farm labor policies. Thus, in 1968 for the first time in 25 years, the U. S. Secretary of Labor announced that no foreign workers (braceros) would be imported into the United States. It is estimated that this decision provided \$3 million dollars in additional income for local farm workers, a minimum of \$1 million dollars in additional income to local merchants, and a \$750 thousand dollar savings to local welfare departments. (*Alaniz v. Wirtz*, U. S. District Court for Northern California, No. 47807)

Working conditions. In 1965, California passed legislation which for the first time protected the farm worker's health and safety. Because of the inability of the appropriate government agencies to enforce the law, farm workers were compelled to go to court in a series of suits seeking what the law ordered: toilets, handwashing facilities, and drinking water. As of the summer of 1969, neither the law of four years before, nor the conditions that the law sought to improve, had substantially changed. (*Manriquez v. Mosesian*, California Superior Court, Kern County, No. 105175; *Garcia v. Kovacevich*, California Superior Court, Kern County, No. 105072; *Perez v. Morales*, California Superior Court, Stanislaus County, No. 100602)

Both local communities and the poor are often ignored by the government.

Food for the hungry. Congress has provided two Federal food programs to assist the poor: the Food Stamp and the (surplus) Commodity Distribution programs. As of December, 1968, 16 of California's 58 counties had refused to institute such programs. CRLA secured an injunction, before a three-judge Federal Court, to compel the U. S. Secretary of Agriculture to institute Federal food programs in each of these counties. On June 2, 1969, State Superintendent of Schools Max Rafferty joined CRLA in contending that the U.S. Secretary of Agriculture was discriminating against poor people and violating President Nixon's mandate that all hungry persons be afforded an opportunity for a minimal adequate diet. The State of California joined CRLA in this action primarily because the U.S. Secretary of Agriculture ignored the law and refused to comply with a binding Court Order to make food available for hungry persons in every California county. By the summer of 1969, California became the first large state in which every county was operating a Federal food program. CRLA, therefore, voluntarily dismissed its suit. (*Hernandez v. Hardin*, U. S. District Court for Northern California, No. 50333)

Federal government encourages fathers not to work. Perhaps the most striking example of the Federal Government's failure to be responsive to the needs of the states, local communities, and the poor, is a CRLA case presently before a three-judge Federal Court seeking to abolish the "don't work" rule, a Federal welfare rule which discourages fathers

from seeking employment and encourages them to desert their families. (Fathers can secure assistance for their children only if they refuse to work or desert their families.) U. S. Department of Housing, Education and Welfare Secretary Robert H. Finch is at least equally concerned, and has submitted certain proposals to the President which could legislatively achieve the results CRLA seeks in its lawsuit. (*Macias v. Finch*, U. S. District Court for Northern California, No. 50956)

Divorce or deprivation welfare rule. The Federal welfare structure frequently compels unnecessary divorces by conditioning welfare assistance for needy children on the termination of their parents' marital relationship. Presently pending before a Federal three-judge Court is a CRLA action seeking to abolish this "divorce or deprivation" rule, which prohibits welfare payments for 90 days unless a deserted mother files for divorce. This welfare rule is believed to unnecessarily destroy thousands of saveable California marriages. A preliminary order on behalf of the clients has been issued in this case. (*Jenisch v. State of California*, U. S. District Court for Northern California, No. 48462)

The "divorce or deprivation" case is presently before the three-judge Federal Court as a result of a prior CRLA case which was the first successful Legal Services case ever brought before the U. S. Supreme Court. (*Damico v. State of California*, U. S. Supreme Court, No. 629 misc., Oct. term, 1967)



The poor need to be able to speak for themselves, not to depend upon others to do so.

The right to vote. Only one major group in America is denied the right to vote: the American of Mexican ancestry who is literate only in Spanish. As the result of special Congressional legislation, even illiterates are permitted to vote in certain states. In addition, Americans of Puerto Rican ancestry, despite being literate only in Spanish, are permitted to vote in most states. The irony and the irrationality of this is graphically illustrated in California. Despite the State's long and uniquely rich Spanish-Mexican heritage, and its 11 % Spanish-surnamed population, Spanish literacy has not been sufficient as a basis for eligibility at the polls. The result of this inequitable exclusion has been an increasing loss of interest in community affairs by a group that helped write the California Constitution (in both Spanish and English) and which continued to be a real part of the California community until recent decades when the California Constitution was changed. CRLA presently has on appeal before the California Supreme Court a case contending that it is unconstitutional to discriminate against persons who are literate in Spanish, especially since a large number of Spanish-language newspapers and radio stations serve these people. U. S. Attorney General John Mitchell recently suggested legislation (nation-wide abolition of literacy tests) that might achieve the same result. (*Castro v. State of California*, California Court of Appeals, No. 33529)

Right to water. Imperial County lies at the southeast corner of California. It is part of the Colorado Desert, one of the most geologically arid regions in North America. Because of water brought from the Colorado River, the county has become one of the fifteen wealthiest agricultural counties in the United States. At the same time, Imperial County has one of the highest unemployment rates in California. The Imperial Irrigation District, the agency which supplies both water and power to the area, has made a practice of charging abnormally low water rates to the grower and unusually high electricity rates to the consumer.

It has been successful in continuing this inequitable system because it has been unequally apportioned. The voters residing in districts serving farm areas have 5 times more voting power than their numbers would justify. As a result, CRLA, on behalf of Imperial County consumers, has brought suit to compel the Irrigation District to reapportion. The case is presently on appeal. (*Girth v. Thompson*, California Superior Court, Imperial County, No. 40096)

Right to freedom of association. Federal law guarantees to every major occupational group except farm workers the right to join a labor union. California is one of the few states that does protect farm workers. It prohibits employers from firing any worker, including a farm worker, merely for exercising his freedom of association by joining a labor union. Some growers have recently commenced to negotiate with such farm worker unions. On the other hand, at least a few growers have not only refused to negotiate with farm worker unions, but have proceeded to summarily fire workers who have exercised their legislatively-protected right to join a labor union. In one case, 9 skilled farm workers were fired when their employer discovered that they had joined the United Farm Workers Organizing Committee, AFL-CIO. CRLA filed a lawsuit on their behalf, and as a result the men were rehired and a full settlement was reached. As part of the settlement the farm workers were guaranteed a minimum salary of \$4,500, protected from future firing by an arbitration clause, and their rights to join a labor union were fully recognized. In addition, the California District Court of Appeals, in an unprecedented decision, ruled that farm workers, including these 9, cannot be fired for union membership. (*Wetherton v. Martin Produce*, California Superior Court, Monterey County, No. 63696)

Farm workers need to have a share in the free enterprise system.

The problems confronting farm workers and the rural poor cannot be resolved by litigation alone. The vast housing shortage in California is one graphic illustration of the limitations of lawsuits which, at best, can only serve to redistribute qualitatively and quantitatively inadequate housing. Another example is the shortage of job opportunities for seasonally employed farm workers. CRLA, in conjunction with a number of other community organizations, has attempted to use and cooperate with the vast business acumen and financial resources available within California to resolve some of these problems without resort to conflict or litigation. Described below are two free enterprise oriented programs CRLA has participated in – the first already in operation, the second recently proposed.

Rural Development Corporation. In 1968, California's U. S. Senators jointly announced the funding of a corporation to provide technical expertise and seed money for the construction of low-income housing in rural areas. The corporation, RDC, while operating in a fashion similar to other corporations, would seek to develop new methods of design and construction in order to facilitate housing at a cost within the reach of families at the poverty level. Predicated on the philosophy that home ownership encourages family stability and community interest, most of the corporation's efforts have been in the area of home ownership. A major project, involving relatively unique design and construction methods, has been started in Calexico, a California town bordering on Mexico and heavily populated by farm workers.

Economic Development Corporation. The fertile San Joaquin Valley has one of the highest unemployment rates in the nation – it exceeds 16% during the winter and is as high as 40% for minority groups. CRLA, in conjunction with a local community action program, has submitted a proposal for an Economic Development Corporation to be operated and owned by a combination of farm workers and local businessmen. It would attempt to capitalize on the seasonal nature of employment in this agricultural area by establishing seasonal manufacturing operations, requiring minimal capital investments, in which semi-skilled and unskilled labor is necessary. The business community would contribute its business and financial expertise, and the low-income persons their labor.

An example of the type of light manufacturing item that would effectively utilize unskilled and semi-skilled workers without a substantial capital investment would be the manufacture of simple furniture such as garden furniture. Common stock with voting power in the corporation would be offered to all employees in combination with a public offering to the low-income community at large. The remainder of the capital investment would be from the local business and financial community. The expectation is that in the initial year a corporation would be formed employing approximately 30 persons, which would commence work on five similar-sized and related enterprises.



What CRLA is



History

California Rural Legal Assistance is a statewide law firm, funded by the Office of Economic Opportunity to provide free legal services, to many of California's rural poor. It was the first OEO program designed to assist farm workers, and its initial funding in May of 1966 in the amount of \$1.276 million dollars represented the largest legal services grant ever made by the OEO office.

During the first year of its existence, its central administrative office was established in Los Angeles, with nine regional law offices throughout the state. Despite strong political pressures, the program has been refunded each year since. For two years, CRLA also maintained a special office to represent Indians in their peculiarly Indian problems. Recognizing the enormity and the uniqueness of these problems, CRLA was successful in securing independent funding for a program to exclusively serve Indians—"California Indian Legal Services."

In 1968, as an efficiency and economy measure, the central office was moved from Los Angeles to San Francisco to be substantially closer to a majority of the clients served by CRLA's nine regional offices and to the agencies and courts where most of their problems are sought to be resolved. An office was also opened in Sacramento to conduct an advocacy and legislative information program which would serve State administrative agencies, the Legislature, and other rule-making bodies on issues affecting CRLA's client community.

In the same year, the firm was named the outstanding Legal Services Program in the nation by the Office of Economic Opportunity's National Advisory Committee for Legal Services "for its services to the cause of justice for the poor, through innovation, law reform, legislative work, and test cases."

Organization

Legal services are most effective in rural areas if they are provided on a statewide basis. This is true, partly because in the sparsely populated regions of the State there is often no single county with a population large enough to support a program of its own. It is also true because clients are frequently compelled by their work to migrate from one area of the State to another, repeatedly crossing county lines, and thus losing touch with attorneys whose operations are restricted by jurisdictional boundaries. A statewide organization provides a unique opportunity for correlation of activities for maximum efficiency, and for specialization in problems of particular concern to the rural population.

The CRLA staff, statewide, consists of approximately 120 persons, of whom about 40 are attorneys and 25 are liaisons with the community (investigators, community workers), plus appropriate secretarial and clerical staff. The central office coordinates legal and agency matters throughout the State and houses the administrative staff for the entire organization.

Caseload and costs

During the calendar year, July 1, 1967, to June 30, 1968, CRLA accepted 10,351 new cases. Despite this average of 1,000 new cases per office, the median number of open cases per office was less than 150, indicating that there was a reasonably rapid resolution of the majority of the cases. Approximately 85% of the time spent on cases by CRLA attorneys has been and continues to be on conventional "service" cases – such as adoptions, wage attachments, and used car problems.

According to the monthly reports of CRLA regional offices, during the same calendar year, 25,877 clients were directly benefitted by these cases with indirect benefits being extended to as many as one million more persons because of the statewide effects of some of the cases handled.

The average cost per case during the same time span was under \$100 (\$96.26). This low cost was partially attributable to CRLA's low attorney-per-hour costs – \$10.93 including overhead per hour as compared with a minimum of \$25 per hour for associate attorneys in most California law firms. It is estimated that CRLA annually has produced income, or secured savings, to the California taxpayer in an amount in excess of one hundred times its yearly appropriation.*

Philosophy of service

Since its inception, the philosophy of CRLA has been to provide to the poor the same high quality of service that the wealthy client would expect from the law firm representing his interests. The poor, like the rich, are entitled to good lawyers who take the time to serve their needs. Just as the best large law firm represents business associations and groups of wealthy clients, because those groups have similar interests, so CRLA has acted as "house counsel" for groups of poor people. The problems which a poor person faces are not just his individual problems; all too often they are problems common to all the poor.

The wealthy have traditionally used the lawyer as an adviser – on what is best regarding his business, on what is best regarding his children's education, and on what is best regarding his employees. CRLA attorneys have attempted to be that type of resource for the poor – to advise regarding schools, jobs, housing and government. Those clients which CRLA has been able to serve, for it is only able to serve a fraction of those who need its services, have come to see the law as a vehicle for their betterment.

Poverty often brings despair and cynicism toward the possibility of change, individual and collective, through the legal order. The philosophy of CRLA has been and is that the poor, when served by vigorous, competent and high-minded lawyers, can have hope amidst poverty. Our short history confirms that this philosophy works.

*For example, \$3 million per annum saved by the elimination of county subsidies to landlords, *Phillips v. Davenport*, California Superior Court, Monterey County, No. 64125; \$3 million generated in income in 1968 through restrictions on foreign workers, *Alaniz v. Wirtz*, U. S. District Court for Northern California, No. 47807; \$250 million saved in 1968 by the suit to prevent Medi-Cal cuts, *Morris v. Williams*, California Supreme Court, No. SAC-7817; and \$10 million per annum saved by the food stamp case, *Hernandez v. Hardin*, U. S. District Court for Northern California, No. 50333. On the other hand, CRLA's annual budget is only \$1 1/2 million.



Statistical data



The number of poor people in rural California

CRLA has a potential client community of 577,000 persons.

Approximately 890,000 poor persons live in rural California.¹

At least one-third of these persons (300,000) are dependent on farm work for their principal income.²

Of this number, about 84 % (252,000) earn less than \$3,000 per year.³

Of the remaining 590,000 poor persons, at least 55 % (325,000) live in agricultural areas and earn less than \$3,000 per year.⁴

The percentage of poor families in rural California is over three times greater than in urban areas of the State.

Urban poor	13.2 %
Rural poor	43.1 % ⁵

California's racial and ethnic composition

Minority groups constitute a disproportionately high percentage of all California farm workers. Almost 9 out of every 10 farm workers are brown or black; although these minority group persons represent only one out of every five Californians.

	Population ⁶	Farm Workers ⁷
Anglos	78.8 %	12 %
Mexican-Americans	11.1 %	67 %
Others	10.1 %	21 %

California agribusiness

California agriculture is perhaps today's most profitable business enterprise.

Although California's farms account for only 2 % of the nation's farms, they produce agricultural products accounting for nearly 10 % of the national gross cash receipts from farming.

In 1968, California's gross agricultural revenue exceeded 4 billion dollars, and led the nation.⁸

As part of this abundance, California leads the nation in the production of 40 crops, from honey and apricots to dairy products and turkeys.⁹

California is no longer a land of small farms. Typical of the increasing centralization and growing size of its farms is the 1968-69 acquisition of 9 Salinas Valley farms by United Fruit Company, Boston, Massachusetts.¹⁰

75 % of the state's farm workers are employed on large-scale mechanized farms (7 % of the State's farms).

79 % of the agricultural land is owned by 7 % of the farms.¹¹

Farm worker wages

In 1967, the average California farm worker earned \$2,024.¹²

However, this does not accurately represent the present condition. As a result of collective bargaining, unilateral grower efforts to improve the lot of workers, and CRLA lawsuits, California farm worker wages, although considerably lower than those for any other State industry, are the best in the nation with the exception of Hawaii.

\$2.00 per hour, general labor in wine grapes.¹³
(Collective bargaining agreement)

\$1.65 per hour minimum wage, a 25 % increase over the previous minimum wage of \$1.30 per hour.¹⁴
(As a result of a CRLA lawsuit, joined by the State of California in recognition of its validity and necessity.)

Most California farm workers, however, are like the average farm worker described above. Further, farm workers, unlike almost any other industrial group, are compelled to involuntary idleness during most of the year because of the vagaries of the harvest season.

Industrial workers average 2,000 hours of work a year. Farm laborers average 1,100 hours.¹⁵

Farm worker living conditions

"(The farm worker) remains, as he has since the State's early transition to intensive labor use farming, among the most poorly paid, poorly fed, and poorly housed of California's citizens."¹⁶

4 out of every 5 California farm worker families live in dwellings determined to be sub-standard and dangerous for their health and safety.

1 out of every 3 farm workers have no toilet facilities.

1 out of every 4 lacks even running water.¹⁷

Farm worker health

Farm workers have the highest occupational disease rate in California, twice that of all other industries combined.

25 % more farm workers than workers in general are hospitalized for serious injuries suffered on the job.

36 % more babies born to farm worker mothers die than is true of other occupational groups.¹⁸

Farm workers ignored by the government

Farm workers are the only major occupational group excluded from unemployment insurance coverage and other Federally conferred benefits such as collective bargaining legislation.

Frequently, laws enacted for the benefit of farm workers are ineffectively enforced. The California Legislature has enacted perhaps the most comprehensive farm worker health and sanitation laws. Nevertheless, the State's Industrial Welfare Commission stated that 90 % of all agricultural employers violate such laws.¹⁹ And in a survey conducted by CRLA, 1869 violations of State field health and sanitation laws were noted in one county alone.²⁰

Despite some of the most stringent laws protecting children, some local school boards have attempted to circumvent these laws by closing schools at peak harvest so that child labor can be provided for the fields.²¹

Rural education

The percentage of family heads in rural California with only a grade school education is over three times greater than in urban areas of the State.

Urban family heads	12.7 %
Rural family heads	41.7 % ²²

Rural legal services

Almost half of California's 58 counties have no free legal assistance programs.

CRLA provides legal services in 17 counties, including 7 where it is the sole legal services program.²³

Footnotes

1. U. S. Census of Population 1960—General Social and Economic Characteristics, California, Final Report.
2. State of California, Department of Employment, Research and Statistics Section, Report 851, No. 1, Table 1 (1965), Report 119-2d (1965), Report 842 (1965).
3. According to State of California, Department of Employment, Report 830, Number 2 (1965), 84.1 % of the persons reported as being covered by Disability Insurance earn less than \$3,000 per year from agricultural and non-agricultural employment.
4. U. S. Census of Population 1960, op cit.
5. Ibid.
6. California State Department of Finance, Financial and Population Research Section, Provisional Estimates of the Racial and Ethnic Composition of California, July 1, 1966 and July 1, 1967.
7. California State Department of Public Health, The California Farm Workers Health Services Annual Report, 1967-1968, p. 4.
8. California Crop and Livestock Reporting Service, Farm Income Situation, February, 1969, p. 11.
9. Stipulated to by California Attorney General in *Hernandez v. Hardin*, U. S. District Court for Northern California, No. 50333.
10. Salinas Californian, February 19, 1969.
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Location of offices**Central Office**

1. San Francisco
1212 Market Street
(415) 863-4911

Regional Offices

2. El Centro
Professional Building
Fifth and Main Streets
Room 228
(714) 353-0220
3. Gilroy
22 Martin Street
(408) 842-8271
4. Madera
529 South "D" Street
(209) 674-5671
5. Marysville
116 7th Street
(916) 742-5191

6. McFarland
335 Perkins Street
(805) 792-2157

7. Modesto
405 "H" Street
(209) 529-8452

8. Salinas
328 Cayuga
(408) 424-2201

9. Santa Maria
109 East Cook
(P. O. Box 425)
(805) 922-4563

10. Santa Rosa
1049 4th Street
(P. O. Box 879)
(707) 545-4610

Legislative Office

11. Sacramento
901 "F" Street
(916) 446 7901



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except cover and page 16,
by Lorenzo Avila;
page 15 by Fred Kaplan
from Black Star
Design: Joseph Weston



JUSTICE FOR THE RURAL POOR THROUGH CALIFORNIA RURAL LEGAL ASSISTANCE

WHAT IS CALIFORNIA RURAL LEGAL ASSISTANCE?

CRLA is a state-wide law firm funded by the Office of Economic Opportunity. After extensive evaluation by OEO, CRLA has been judged to be "one of the best legal services programs in the United States."

It is the largest rural legal services program in the country, and the first to provide legal aid to farm workers.

CRLA represents a bold new venture in law :

Because it seeks to provide the same high quality of service which a wealthy client could expect of his lawyer, even though this may mean a decrease in the total number of cases that are handled ;
because it represents groups of poor people, as well as individual indigents, recognizing that poverty is a social as well as an individual problem ;
and because it recognizes the importance of long-term research into the underlying causes of the farm worker's economic deprivation and political powerlessness.

WHAT KINDS OF CASES HAS CRLA HANDLED?

During the first six months of 1967 CRLA attorneys handled over 4,000 civil cases. These were some of the results :

1. A water company which supplied contaminated water to the low-income area of a town has purified the water, and refunded more than \$4,500 on water bills.

2. A grower has conceded that wage bonuses—payment of which are contingent upon staying until the end of the season—are sums immediately earned, and therefore are payable to the employee at the employee's option.

3. Several finance companies have reduced by 50% their interest charges after they were found to be charging exorbitant interest rates. Over fifty contracts have been voided on the grounds that the sellers were guilty of exerting undue influence on the buyers.

4. The U.S. Public Health Service has agreed to immediately construct a water system for an Indian Reservation, after having originally told the Indians that they would have to wait three years to remedy their contaminated water supply.

5. A farm laborer who was fired as a result of successfully pursuing a complaint to the Labor Commission has been awarded \$1,500 in damages.

6. A Rural Development Corporation has been established to assist farm workers in the planning, financing and management of at least six low-income housing projects which will provide new housing for more than 3,000 people.

7. In three rural counties, actions have been taken to protect the rights of Mexican-Americans who wish to qualify and serve as Deputy Voting Registrars.

WHAT ARE SOME OF ITS PENDING CASES?

Many of CRLA's cases still await decision. Consider, for example, these actions which :

1. Challenge the constitutionality of California's English literacy requirement, in an effort to enfranchise thousands of Mexican-American citizens who are literate in Spanish but not in English ;

2. Prohibit the State Department of Motor Vehicles from suspending the drivers license of a person involved in an accident who does not have insurance and cannot post bond—without first determining whether he was at fault ;

3. Question the constitutionality of the one-year residency requirement of the State Social Welfare Department ;

4. Appeal to the U.S. Supreme Court on behalf of rent strikers, challenging the right of public housing authorities to evict people without a valid reason ;

5. Challenge the constitutionality of the Small Claims Court procedure which requires a person appealing a Small Claims decision to post bond in the amount of the judgment against him ;

6. Request reinstatement of eleven farm workers who were allegedly fired because they were supposedly engaging in union activities ;

7. Seek to compel a school district to provide adequate "compensatory" education to Spanish-speaking children ;

8. Assist in the prosecution of welfare officials who, by mistreating welfare applicants, have continually violated State and Federal law.

WHY A STATE-WIDE LEGAL SERVICES PROGRAM?

A legal service program covering more than one rural county is indispensable if legal aid is to be available in the sparsely populated regions of the state where no single county has a population large enough to support a program of its own.

Multi-county coverage is also indispensable in serving clients who are compelled by their work to migrate from one area of the state to another, repeatedly crossing county lines, and thus losing touch with attorney's whose operations are restricted by jurisdictional boundaries.

Because it is state-wide, CRLA has a unique opportunity to correlate its activities for maximum efficiency, and to specialize in problems of particular concern to those poor persons whose plight is often hidden by the majestic mountains, and green fertile valleys in which they live.

WHO DIRECTS IT?

More than 95% of the decisions made by CRLA personnel are professional decisions related to the representation of clients. Of necessity, therefore, most of the direction of CRLA falls to its 30 attorneys—in essence, the law firm which is CRLA. The law offices are also staffed by 23 community workers, interviewers and translators, drawn from the local community, and often farm workers themselves.

CRLA is also a non-profit corporation, in order to be eligible to receive federal funds and private, charitable donations. The corporation is governed by a Board of Trustees, which establishes general policies relating to hiring and payment of personnel, administration, location of offices, eligibility standards, and referral of applicants.

The Board includes 33 members, of whom 17 are lawyers—11 selected by the State Bar or local bar associations, and 6 selected by CRLA and approved by the State Bar. At least 11 members directly represent the poverty community, having been selected by organizations of the poor themselves.

Each area office makes local decisions in consultation with its Citizens Advisory Committee, which is composed of poor persons living in the area.

WHO IS ELIGIBLE FOR ITS SERVICES?

CRLA offers its services to many of California's rural poor, some 577,000 persons who cannot afford a private attorney, and who are not served by a local Neighborhood Legal Service office, Legal Aid Society, or Public Defender's office.

These persons represent a wide variety of ethnic groups: Anglos, Negroes, Indians, Chinese, Japanese, Filipinos, Arabs, Armenians, Hindustani, and vast numbers of Mexican-Americans. Almost half of them are farm workers.

To be eligible for free legal assistance, potential clients must have a yearly income of no more than \$2,200 per individual, plus \$500 for each dependent. In addition, they must not have a potentially fee-bearing case which might be taken by a local attorney.

Groups as well as individuals may be eligible for legal services, if a substantial majority of the members of the group satisfy eligibility requirements.

WHERE ARE CRLA'S OFFICES LOCATED?

Central Office

1. *New Central Office*: 1212 Market Street, San Francisco 94102, (415) 863-4911
James D. Lorenz, Jr., Esq.—Director
Gary Bellow, Esq.—Deputy Director

Area Offices

2. El Centro, Professional Building, Fifth and Main Streets, Room 228, (714) 353-0220
3. Gilroy, 80 Fifth Street, (408) 842-8271
4. Madera, 5 Yosemite Avenue, (209) 674-5671
5. Marysville, 116 7th Street, (916) 742-5191
6. McFarland, 335 Perkins Avenue, (805) 792-2157
7. Modesto, 405 "H" Street, (209) 529-8452

8. Salinas, 711 South Main Street, (408) 424-2201
9. Santa Maria, 109 East Cook, (P.O. Box 1115), (805) WA 2-4563
10. Santa Rosa, 1049 4th Street, Suite F, (P.O. Box 879), (707) 545-4610
11. Santa Rosa (Indian Services), 3700 Montgomery Drive, (707) 542-1221

It's a mighty hard row that my pore hands have hoed,
 My pore feet have traveled a hot dusty road,
 Out of your dustbowl and westward we rolled,
 Your deserts was hot, and your mountains was cold.
 I've worked in your orchards of peaches and prunes,
 I've slept on the ground by the light of your moon.
 At the edge of your city you will find us and then
 We come with the dust and we're gone with the wind.

WOODROW WILSON GUTHRIE.

Mr. LORENZ. My name is James Lorenz. I am a California attorney employed by California Rural Legal Assistance. I represent farm-workers throughout California. Today I would like to talk about the issue of law and order and how it affects our clients.

Basically our clients feel that law and order is an issue that works against them, but not for them. Laws are enforced against them, but not for them. Why this is so is set forth, in part, in my written statement to you, citing 10 cases. We hope to submit a much more detailed report of the state of law and order in rural California at a later date.

Today I would like to depart from my written statement, because last night I received an investigation report which I think rather well illustrates the problem of law and order.

Two weeks ago in Sonoma County, which is about 90 miles north of San Francisco and is mainly an apple-growing tree crop area, an apple grower by the name of Donald Orr, was raided by the border patrol. Half of the employees working on his property were found to be illegal aliens, sometimes called "wetbacks."

The border patrol had raided Orr's property four times in 1968, each time apprehending "wetbacks," so there was a 1.000 batting average on his property.

In fact, the same illegal alien was apprehended on Labor Day, 1967, and on Labor Day, 1968, on Mr. Orr's property. All of the illegal aliens who our investigators talked to said that Mr. Orr knew they were illegal aliens and that most growers who hire illegal aliens know it. The growers know this because anyone who enters illegally doesn't have a social security number, which growers are required by law to note when they hire the men in order to make social security payments to the Government.

Apparently these workers and few domestic workers who also work for Orr further had the distinct impression that Orr preferred "wetbacks" to domestic workers. The reason was rather clear. He was paying \$4 a lug to illegal aliens which for a family of eight of domestic workers amounted to 55 cents an hour—whereas he would have had to pay more to domestic workers. In fact, Orr allegedly told the domestic workers that they had better not demand more money because if they did, he would hire "other workers" who would displace them. And those "other workers," pretty clearly, were wetbacks.

Perhaps the clearest indication of the extent to which illegal aliens depress the wages in agriculture is that Orr was paying \$4 a lug before he was raided; he had threatened to lower the price to \$3 a lug;

the day after he was raided, when he was forced to employ nothing but domestic workers, he was paying \$7 a lug.

In 1968, 151,705 illegal aliens were apprehended by the border patrol.

Senator MONDALE. What is that figure?

Mr. LORENZ. 151,705 throughout the United States, and U.S. Department of Labor officials have told us that for every person apprehended, one to two people go free. That means that if the U.S. Department of Labor estimates are correct, there were approximately 450,000 illegal aliens working in the United States last year, most of them in agriculture. Since the total hired labor force in agriculture is approximately 1.6 million, that means that last year illegals constituted 20 percent of the agricultural force in this country.

I couldn't believe that figure when I looked at it, it seems so astronomically high, but the figure is based upon the U.S. Government estimates. Even if we said it is only 20 percent in the Southwest where a great many farmworkers are employed, that is still a very, very high percentage.

Senator MONDALE. That definition of illegal alien doesn't include green carders?

Mr. LORENZ. That is correct, sir.

Senator MONDALE. And the green carder program is very permissive. It provides that once one green card holder is granted a labor clearance, that all of his relatives can have a green card with no labor need survey at all. If it is 20 percent who come into the United States illegally on no basis whatsoever, and you add to that the number that come in freely under the unprotected green card approach, and then you add the numbers that are counted as U.S. citizens, it is clear that we really do not know the shocking extent of foreign workers in agriculture.

One morning I was on the border where I saw for myself that 40 percent of the people who came through to the United States submitted baptismal certificates. I am a minister's son. I know how hard it is to get those things. Some of the farmworkers were in their 20's, and they had a brandnew certificate.

As far as I know, we have presented this to the Immigration Service, and they have not even looked at these baptismal certificates to see if they are illegal. Most of them are showing no concern about this at all.

So our figures so far only reflect those who come across the border, and they make no attempt at all to include all of those that even assert any legal basis for their presence here?

Mr. LORENZ. That is correct.

Senator MONDALE. So that 20-percent figure, as large as that is, could easily be 40 percent?

Mr. LORENZ. If you throw in green carders, I would say easily 40 percent, Senator. Forty percent of people who are working as farmworkers in agriculture are not U.S. citizens or permanent residents in this country, but are nonetheless taking away wages.

Let me go on a little further to the extent of that adverse effect that illegal aliens are having because it is considerable. The number of "wetbacks" apprehended in California alone in the last 2 years has

increased 85 percent. That is a rather substantial breakdown in law and order.

At the same time, the agricultural employment of domestic workers in some California counties is at the lowest level in 12 years. The unemployment rate range is anywhere from 6 to 10 percent, and in fact in some of these counties right now it is 16 percent, which is extraordinary for the summertime.

Three percent is the national average of unemployment right now. In Sonoma County, where we conducted our investigation in the last 2 weeks and just filed a lawsuit against Mr. Orr, 200 local farmworkers were unemployed and were receiving welfare assistance—AFDCU. It is estimated that county taxpayers alone in that one county—and it is not one of the major agricultural counties in California—spent approximately \$400,000 on welfare costs because of the number of domestic workers displaced by illegal aliens.

It is further estimated that California taxpayers spent at least \$5 million in welfare costs because of the illegal alien competition. We have no figures about the national costs of AFDCU because of these aliens' competition, but we believe them to be substantial.

The loss of wages, of course, to domestic workers was even more enormous. If each "wetback" earned \$350 while he was here, and that is a very conservative figure, and we estimate that there were 300,000 "wetbacks" in this country, the lowest estimate by the U.S. Department of Labor, then the loss in real wages, which otherwise presumably would have gone to domestic workers, was \$105 million.

If we estimate that \$750 was earned by each illegal alien in this country in the time that he was here, then the loss in real wages was over \$210 million to domestic workers.

A vast percentage of these illegal aliens are knowingly employed by employers and that is so because if the man were not an illegal alien, if he were here legally in this country, he would be eligible for various benefits, State and Federal, which the employer would be required to provide.

In three investigations that we have conducted there is strong evidence that employers readily and regularly seek out "wetbacks" because they are more malleable employees, because they don't protest and because, under common practices, they are often brought up for 2 weeks and then reported to the border patrol just before wage payments are made.

Senator MONDALE. Are you saying that occasionally they will be deported and receive no pay at all?

Mr. LORENZ. That is correct.

Senator MONDALE. Do you have evidence of that occurring?

Mr. LORENZ. We do have evidence in some counties.

Senator MONDALE. So that the grower will use their labor for a week or 2 weeks and just before the pay period, he will call the border patrol and have them taken back as illegals, and they have no rights, and they can't demand their wages?

Mr. LORENZ. I would say that is a more exceptional case, Senator.

Senator MONDALE. You referred to Mr. Orr and the charge that he was paying \$4 a lug, which works out to 55 cents an hour. If he were

using domestic labor, he would have to pay \$7, which he applied immediately after he was required to get rid of his illegals.

He, as you say, has been found several times in recent past to have had illegals. As a matter of fact, every time they have raided that farm, they have found illegals, haven't they?

Mr. LORENZ. That is correct.

Senator MONDALE. The workers said that he knew about it. What kind of remedy exists to prevent this grower from continuing to exploit farm labor illegally and bring about these other disadvantageous factors to which you have made reference?

Mr. LORENZ. There are a number of remedies. One is legislative, which I would like to get to later. But the more basic is more effective law enforcement and so I think it would behoove us to take a look at what the border patrol has been doing.

Senator MONDALE. You indicated that border patrol activity is up 85 percent, so presumably they are doing something.

Mr. LORENZ. They are catching people, there is no question about that. But the problem is, it is estimated that at least 80 percent and probably 90 percent and maybe more than 90 percent of the people who are apprehended return. That is the problem.

We talked to one of the illegal aliens who was picked up on Orr's property. The investigator, who was a Mexican American by the name of Felix Cruz, asked him in Spanish, "Did he want us to help him dispose of his automobile since he was being deported." And he said, "No, it is no problem. I will be back in 3 weeks."

At least 90 percent of the people who are apprehended are allowed by the Immigration Service to leave the country voluntarily.

Senator MONDALE. So when the illegal is apprehended, he is required to go back across the Mexican border, and he turns around and comes back?

Mr. LORENZ. That's right.

Senator MONDALE. That is the extension of the sanction. It is a crime, isn't it, to be here illegally?

Mr. LORENZ. That is correct. And if he is apprehended a second time, he is subject to a felony prosecution, but in 90 percent of the apprehensions last year, there were no felony prosecutions. And there are a number of reasons for that.

One of the reasons is that the Border Patrol can't tell who is here the first time and who is here the second time, because, first of all, they don't even take fingerprints when they apprehend the man. This is so even though most of the smallest police forces in the country take fingerprints and even though the Border Patrol did so through 1965. If they did take fingerprints, the FBI could tell them within 15 minutes whether the suspect had been in the country before and had been apprehended. So simple basic kinds of law enforcement practices are not used by the Border Patrol, No. 1. So they don't know who are prior offenders and so there are no felony prosecutions. That is one problem.

The second problem is that they readily take a man's word for who he is, so there are literally thousands of fictitious names in their files of people who have been apprehended.

Thirdly, they fail to keep any cross-index of employers who have had illegal aliens picked up on their property. A cross-index would be useful for a number of purposes: One, as an aid to law enforcement officials in concentrating their efforts on those farms where there are most likely to be aliens; and two, as a basis to begin prosecutions against the employers. But there is no cross-index. I can only say, and here I have no empirical basis for the statement, that the lack of cross-index certainly helps the lack of enforcement of prosecutions against the employers in this area.

Next, the Border Patrol has failed at all to computerize the operations, despite attempts by officials within the Border Patrol to do so. We are informed that computerization has been resisted by officials higher up, presumably within the Immigration Service, which the Border Patrol is under and by officials in the Justice Department.

Next, the Border Patrol and Justice Department and INS are not placing any pressure on local U.S. attorneys to prosecute repeated violators for felonies. They say that they don't have time. Of course, one answer to that problem is that right now they are spending a great deal of their time running what is a revolving door.

Right now, the Border Patrol is probably the largest and most expensive public travel agency in the world. So, of course, they don't have time to investigate cases to launch prosecutions. And one of the assistant U.S. attorneys in San Diego tells us that because there is no deterrence in the law against illegal aliens that come in and because they have no fear of prosecution, they have no incentive to testify, to be forced to testify against the persons who bring them in and who are sometimes prosecuted. And so as a result of this, the prosecution rate of transporters of "wetbacks" is also unnecessarily low.

Finally and perhaps most important, there are no prosecutions against employers who employ illegal aliens. There are several reasons for this. One is that there is a specific exemption in the United States Code for employers, an exemption which says that the mere employment of "wetbacks" will not constitute a criminal offense. However, that exemption applies only to employment; it doesn't extend to harboring illegal aliens, feeding them and transporting them, which a number of employers do.

Senator MONDALE. Has there ever been a prosecution for the aliens that are not exempted?

Mr. LORENZ. Possibly one or two.

Senator MONDALE. Are you aware of any?

Mr. LORENZ. We talked to Border Patrol people and INS people last year and they told us there has been one or two.

Senator MONDALE. Mr. Orr, the farmer to whom you have made reference, on whose farm the Border Patrol routinely finds illegals, would presumably be prosecution-proof for having them there as employees because that is exempted under the act. But if he harbored them or transported them or fed them, then he would be subject to prosecution under the act?

Mr. LORENZ. We would argue, yes. One U.S. attorney we talked to said it is a gray area in the law and he really didn't want to get into a gray area. The U.S. Government has gotten into lots of gray areas

in the law when students are involved in black militants and brown militants. There is certainly no diffidence at all in the Spock prosecution. So we are not entirely convinced that there is no possibility of getting into prosecutions in this area. Furthermore, one man in the U.S. attorney's office told one California reporter, "We are not going to get into that area." He said, "There are too many wets here, there are too many employers who hire them. We would have an enormous amount of political pressure in the office if we started prosecution against the employees."

That is the state of the law on the border issue in 1969 in the State of California. We feel the Border Patrol from our experience is conscientious, fair, willing to act, and reasonably efficient. The problems I have cited on their law enforcement practices, we feel, come from higher up.

There are policies that could be changed by the head of the INS. There are certainly policies which could be changed by the Attorney General, Mr. Mitchell, who has made a number of statements about law and order in this country.

Well, at present he has a law and order crisis in his own Department. The Border Patrol can be likened to a Gilbert and Sullivan operetta in its comedy and ineffectiveness. It is probably the most expensive revolving door ever constructed, and if FBI were as inefficient as Border Patrol or as ineffective as Border Patrol has been allowed to be in enforcing laws against the illegal aliens, this country would be inundated with crime.

Senator MONDALE. Suppose you were a lawyer for one of the large growers that came to you and said :

Mr. Counsel, I would like to hire some foreign labor. I would like to bring illegals up here, because I think I can pay them 20 percent or 30 percent less than I have to pay domestic labor. Can I safely do that without fear of civil or criminal penalties? What would you have to advise him?

Mr. LORENZ. First of all, I would do what a number of defense lawyers do, I would never make any written memos or any notes of conversation. If I had to make an illegal analysis, I would be sure that was collected at the end of the meeting and burned. Then, I would say, "I can't tell you to violate the law. I think you are running unnecessary risks, but if you were to work through a labor contractor, for example, and you had no personal contacts with wetbacks and you didn't know whether they were illegal aliens or not, but you used the right man as a contractor, you would have no problem."

That might be my legal advice. Since I haven't been called upon to give that advice, I am giving it off the top of my head.

Senator MONDALE. So the result is that although we thought we had eliminated the Bracero Program, and though we thought we had set up a system where domestic citizens or resident aliens would not be exposed to foreign competition, in fact, there is almost an uninhibited flow of foreign labor. Unskilled, impoverished Mexicans are freely crossing the border, daily, by the thousands, to substitute for and compete against our own U.S. citizens and permanent resident aliens in this country.

It is reducing farmworker wages, it is displacing farmworkers and jobs, it is jeopardizing the chance of developing a union, it is increasing

welfare costs and unemployment costs to which you have made reference, and despite the laws that exist, both Federal and State officials are refusing to enforce these laws in any way that adversely affects this flow, is that correct?

Mr. LORENZ. That is correct, Senator. That is in violation of the law and that is what law and order means to lots of farmworkers in 1969. And in California, to cite another case very briefly, over a thousand cases of pesticide injuries are reported each year and a minimum of two fatalities per pesticide and at least 400 employee injuries and it is estimated that for every case that is reported of an injury, at least three cases go unreported.

And doctors tell us, furthermore, that the only way they can give adequate treatment is to know what pesticide is used on the field and that for the Department of Agriculture either at the State or Federal level will not divulge.

Senator MONDALE. We had a statistician here recently who testified that in his judgment there may be as many as 800 deaths a year from pesticides, and 80,000 injuries from pesticides annually, principally to the workers and applicators in the field.

Does that surprise you?

Mr. LORENZ. And I think a substantial number of these injuries and those deaths must be laid directly at the doorstep of the people who are presently charged with regulating pesticides. They don't even make the information available to the public by which a doctor can give proper treatment.

Right now, to cite another example, because the problem is not just with the Attorney General of the United States, who has law and order crises in his own Department, the problem is also with the U.S. Department of Agriculture and Secretary of Agriculture. They are now suppressing all information which is submitted to them that goes into the initial registration of pesticides and demands have been made upon them by various groups, including the Environmental Defense Fund, including our own organization, and that information has been wrapped up in the General Counsel's Office and has been totally suppressed.

We can't even find out as to those pesticides, which of them have not yet been registered, where the greatest amount of scrutiny should be given. We can't even find out what is going to be on the box that the producer is finally required to put on the box so that the public will be notified.

The labels, too, are secret. That is how bad it is. That is a clear violation of the Free Information Act. That is another state of the law and order in 1969.

Senator MONDALE. I regret we can't go on longer, but our time has just expired due to an important executive session of the full Senate. I do appreciate your coming here and providing us with this information on illegal entrants, as well as other legal issues.

At this point, I order printed in the record prepared statements and other pertinent materials supplied for the record.

(The information referred to follows:)

UNITED STATES COMMISSION ON CIVIL RIGHTS

Staff ReportAdministration of Justice

...Right now, the man we are speaking of in Northern New Mexico does not see the legal process or court process...as holding any promise to him whatsoever. As a consequence, he is probably quite reluctant to even think that the government might offer protection as well as punishment. 1/

This characterization of the relationship of Mexican Americans to the administration of justice in northern New Mexico, made by a participant in a closed meeting last spring of the New Mexico Advisory Committee to the Commission on Civil Rights, appears to be applicable to many areas in the Southwest.

The alienation felt by Mexican Americans from the legal system has consequences beyond the realm of individual feelings. In northern New Mexico, for example, the descendants of Spanish settlers feel that they have been unjustly deprived of their lands through a legal system which is foreign to their tradition and which they do not understand. Many have indicated they support the Alianza Federale de Mercedes, an organization which says it is dedicated to redress the grievances with respect to their lands by legal means if possible, but by extra legal means if necessary. There has been disorder, fear and repression in that area (see infra). The witness before the Advisory Committee thought that all this could have been prevented:

I think if we could begin to demonstrate in this Nation that justice is a possibility, and that the law and justice is for /Mexican Americans'/ benefit, that an awful lot could be accomplished that would not cost the government millions of dollars ... 2/

1/ Transcript of closed meeting held by the New Mexico Advisory Committee to the Commission on Civil Rights on May 4, 1968 (hereinafter New Mexico T., May 4, 1968) at 243.

2/ Id. at 243-44.

The Commission has received many complaints that Mexican Americans in the Southwest do not receive equal justice under law. The Commission has undertaken a study of this subject. In connection with that study, which is not yet completed, and in preparation for the Commission's San Antonio hearing, the Commission staff has conducted investigations in five Southwestern states: Arizona, California, Colorado, New Mexico and Texas. During the spring of 1968, the New Mexico Advisory Committee to the Commission held two closed meetings to investigate problems in the administration of justice affecting Mexican Americans. The California Advisory Committee held a similar meeting in the summer of 1968. Under contract with the Commission, the California Rural Legal Assistance, Inc. examined the composition of grand juries in 22 California counties to determine whether Mexican Americans were being discriminated against in the selection of grand jury members. 3/ The Commission also distributed a questionnaire concerning employment practices, training programs, complaint review procedures and community relations problems to 800 law enforcement agencies in the five states. To date, more than 200 law enforcement agencies have responded to the questionnaire and their answers are being analyzed. Commission staff members have interviewed several hundred persons knowledgeable about problems in this area, including leaders of Mexican American communities, judges, jury commissioners, probation officers, law enforcement officers, lawyers, and individuals who have had dealings with the courts or law enforcement officers.

During the course of these investigations and meetings, the Commission staff has received many reports alleging discriminatory treatment against Mexican Americans. Although the reports varied, certain types of complaints recurred. This staff report is intended to summarize and illustrate the complaints and allegations received to date by the Commission. A full report of the Commission's study will be completed and released in about six months.

1. Police Harassment

The most common complaint was that of harassment by the police. Such alleged harassment includes discourtesy, frequent stopping and questioning of Mexican Americans on the street, illegal searches and seizures and outright brutality. 4/ Accusations of this kind were made in most of the cities and towns visited by Commission staff.

3/ The 22 counties surveyed included the 20 California counties with the highest Spanish-surname population and the 2 counties with the highest Indian population.

4/ Unless otherwise indicated, all the complaints and allegations discussed in this report are based on staff interviews and on transcripts of closed meetings of State Advisory Committees to the Commission.

The most shocking stories of police brutality were told by residents of small towns where, according to many Mexican Americans, such occurrences are common.

A lifelong resident of a California town whose population is about 20 percent Mexican American told the California Advisory Committee of being beaten by the local police in 1963. 5/ According to the complainant, he was in a bar when three police officers told him to come outside to talk to them. At that time, there were many migrant farm workers in town and he thought that he was mistaken for one of them. He told the policemen that "they were barking up the wrong tree." When he refused to leave the bar, the policemen, according to him, said he was "just another smart Mexican," threw him on the floor, kicked him and handcuffed him. The witness claimed that he made no move to resist the arrest. He reported that the officers threw him in a car and, when he could not get in because of the narrowness of the door, slugged him and kicked him inside. By this time, he told the Committee, a great crowd had gathered because he was well-known in town, he had never been in jail, and people were amazed that he had been arrested. He gave this description of the incident to the Commission.

In the process of trying to get me in they kicked me and kicked me and kicked me and I would get up and I said why are you doing this to me ... and they would say, 'Get in there you damn Mexican!' 6/

According to the complainant, the officers subsequently took him to jail and charged him with drunkenness. He was acquitted on this charge and, with great difficulty, found a lawyer who was willing to bring a civil action against the police officers. One of the police officers was found not liable and a recovery was obtained against another. The judgment, however, did not end the practices complained of, the complainant stated, and he and his brothers reportedly have been subject to constant harassment at the hands of the police

5/ Transcript of closed meeting held by California Advisory Committee to the Commission on Civil Rights on August 17, 1968, (hereinafter California T.) pp. 264-301.

6/ California T. at 268.

department because of his suit.^{7/} According to the complainant no disciplinary action was taken by the police department against the officer against whom the judgment was rendered and since that time he has been promoted to the position of lieutenant.

Currently a Texas Highway Patrolman is being prosecuted by the Department of Justice on charges of assaulting a Mexican American man, in violation of 18 U.S.C. 242, a Federal criminal statute prohibiting the infliction under color of law of summary punishment on the basis of race, color or alienage. The information filed by the U.S. Attorney in the U.S. District Court for the Western District of Texas, San Antonio Division, charges "that on or about January 7, 1968, ... in the Western District of Texas, the defendant ..., patrolman of the Texas State Highway Patrol, acting under color of the laws of Texas, did willfully beat, strike, and assault ..., an inhabitant of Texas, with the intent and purpose of inflicting summary punishment upon him, and thereby did willfully deprive[him]...of a right secured and protected by the Constitution and laws of the United States, to wit, the right not to be deprived of his liberty without due process of law."

Similar incidents were reported in larger cities. A lawyer with the Legal Aid Society in a Colorado city charged that police officers in his community abuse Mexican Americans. As an example, the lawyer cited the experience of an elderly Mexican American who sought police assistance one evening after the steering wheel of his automobile became inoperative. Reportedly the policemen pulled up alongside the Mexican American's vehicle and ordered him to leave his car and approach the police car. When he explained what had happened, the officers allegedly told him that there was nothing wrong with his car and that he was just drunk. He denied being drunk. During the discussion, according to the complainant, the officer lighted a cigarette and the man asked if he could have one. The officer, allegedly replied: "There are no cigarettes for you, Mexican." When he became offended and tried to walk away, he was arrested and jailed. At the police station, according to the lawyer, the man was verbally insulted, put into the "drunk tank" and beaten by a Deputy Sheriff who broke his jaw.

^{7/} The September 1968 issue of "Law in Action," a publication of the OEO Legal Services Program, discussed a recent suit filed against the city and county law enforcement agencies in the area where this incident occurred. The complaint alleged that a Mexican American resident was beaten by the police in retaliation for his successful challenge of a traffic charge. The plaintiff claims that he was beaten to the ground, squirted with chemicals in the face and then arrested, booked and imprisoned. No charge, allegedly, was pressed against him. ("Law in Action," Vol. 3, No. 5, September 1968).

In a Texas city a middle age Mexican American man who has often been arrested for drunkenness and loitering told Commission staff members that he spent several months in a Veterans Hospital as a result of being beaten and kicked by local police officers. This reported incident began when just after he had bought a bottle of liquor, a police officer approached him as he was walking down the street and demanded the bottle. When he refused to surrender the bottle, the arresting officer called for assistance and, reportedly five police cars appeared. The complainant said that he was knocked to the ground, kicked and beaten and detained in jail for five days without medical assistance although he repeatedly sought medical attention. When he was finally taken before a judge, he alleged, the charges were dismissed and he was taken to a hospital immediately.

There have been several incidents reported to the Commission involving the use of deadly force, force that resulted in the death of the individual, by police officers against Mexican American suspects. These incidents, unlike the alleged incidents previously described, have involved some resistance to arrest by the victim. The use of deadly force in these circumstances, however, has been severely criticised by Mexican Americans since they do not believe that such force would have been used against Anglos.

One such incident reportedly occurred in a small town in Southern California. According to one of the leaders of the local Mexican American community, three young men were going home late one night when they were stopped, questioned and searched by a police officer. The officer reportedly did not give them any reason for his actions but told them that he was going to take them to jail because they had no identification. At that point, one of the young men, aged 18, started to run. Another police car stopped and an officer jumped out and killed the youth with his service revolver. The officer was prosecuted on a charge of involuntary manslaughter, but the case was dismissed after the prosecution presented its case. 8/

2. Harassment of young people

According to persons interviewed, two groups of Mexican Americans -- juveniles and narcotic addicts -- are particularly subject to harassment by the police.

A Mexican American resident of a California city, who is active in the community, described an incident involving the excessive use of force by Sheriffs officers against a 16-year-old boy. She told the California Advisory Committee to the Commission:

I heard of these cases, but I had never actually seen one. This one, I was on the scene immediately after it took place. The blood wasn't even dry on the street in front of his own home. Because of a very childish disagreement with his sister, his sister had called the police, and the boy being very resentful of the fact that she had called him - called the police - resisted in that he demanded to know why they were going to take her word over his, and he was 16. He is a very, very, slim, tall youngster. He is not a belligerent - he is not a tough guy - he is very passive, but in this one instance he did resist and he was hostile.

Nevertheless, he was taken, he was handcuffed, and he was dragged by his feet from the driveway into the police car, and it was blood from his face that was left on the street. I went immediately to the emergency hospital which is very near the home and I saw the boy. I think any human being would have done exactly what I did. I demanded to know why they had to treat that boy in that fashion, and of course, I was ignored at that particular moment, but I followed up on it.

Immediately afterwards, I went to the Sheriff's department and demanded to speak to the two arresting officers, and after an hour and a half I was allowed to see them. Their excuse was that the boy had resisted arrest, he had assaulted an officer, and I demanded to know in exactly what manner he had assaulted these two very large, very confident, very well trained young officers. One said that the young man had kicked him on the shoulder while he was driving. 9/

It became apparent to her, she said, that in fact the officers had no charge to bring against the boy, who was released the next day. She stated that no charges were brought against him as a result of the arrest.

9/ California T. p. 133-135.

A lawyer in a city in New Mexico told the New Mexico Advisory Committee that he saw from his office window a policeman and a man in civilian clothes chasing a young boy whom they caught in a parking lot. He said that the man in civilian clothes "dragged the kid down and the cop jumped on his back and started riding piggy-back on him and started to push his head against the pavement." 10/ The lawyer was so aroused by what seemed to him to be the use of excessive force that he ran down to investigate. His complaint to the police department did not bring any results. The victim, a 16-year-old Mexican American accused of shoplifting, had tried to run away from the officers. He later claimed that his head was banged against the pavement seven times. His family did not want to pursue the matter and the police argued that the lawyer could not have seen what happened from his fifth floor office window.

Mexican American juveniles complained repeatedly that law enforcement officials frequently stop, question and frisk them, regardless of whether they have grounds to suspect them of having committed any offense. 11/ Young people in one Texas city, for example, claim that they are stopped and questioned frequently by police officers, particularly at night. According to one young man, unless a young Mexican American can prove that he has a job, he may be arrested and charged with vagrancy or drunkenness. According to a resident of the city who has worked with young people in Mexican American neighborhoods, teenagers are stopped daily on their way home from school.

A Mexican American resident of a city in New Mexico told a Commission staff member that his 18-year-old son was stopped for no apparent reason by some city police officers. According to the father's account, the officers

10/ New Mexico T., May 4, 1968, at 41.

11/ In Terry v Ohio, 392 U.S. 1, 14 decided last term, the Supreme Court recognized that frequent stopping of citizens by law enforcement officers creates a serious problem in police-community relations. In a footnote, the court noted that "while the frequency with which frisking forms a part of field interrogation practice varies tremendously with the locale, the objective of the interrogation, and the particular officer--- it cannot help but be a severely exacerbating factor in police-community tensions. This is particularly true in situations where the stop and frisk of youths or minority groups is motivated by the officers' perceived need to maintain the power image of the beat officer, an aim sometimes accomplished by humiliating anyone who attempts to undermine police control of the streets."

ordered the young man out of the car and proceeded to search him and his companions, search the car and check their arms for needle marks. When the young man asked the officers why he was stopped, they told him that there was a defective plastic cover on his license plate. He was released, however, without being cited for a traffic violation. According to the young man's father, his son does not have a juvenile record or any history of involvement with the police.

Many allegations relating to discriminatory treatment of juveniles were made. One of the most common complaints was that Anglo juvenile offenders are released to the custody of their parents and no charges are brought, while Mexican American youths are charged with offenses, held in custody and sent to a reformatory.

A counselor for the State Employment Office in New Mexico gave the following account of the situation in her town:

I know that when we were brought up, there were young people in /town/ who were friends of ours and the boys would get into minor skirmishes, breaking up signs or something like this. They would be taken to the police department, picked up, but they would be released to the custody of their parents. As far as we know, no charges were ever made against these people.

This is why, I think, I was very shocked when I became involved in working with these young /Mexican American/ people, especially with my young friends, and found that charges were made against them, such as stealing cantaloupes out of a farmer's field, curfew violations, being truant from school and things like this. These would all be on record and they all have quite extensive juvenile records.

Among the Anglo people I work with, these just aren't done. I don't think the Anglo children are this much better. I think this just happens, and this the way it is. 12/

12/ Transcript of closed meeting of New Mexico Advisory Committee to the Commission on Civil Rights, on April 20, 1968 (hereinafter New Mexico T., April 20, 1968) at 108.

The former Chief of Police of a city in New Mexico told the New Mexico Advisory Committee that local officials had proposed to treat two trouble-making young gangs in his community -- one Mexican American and one Anglo -- in a widely divergent manner.

The community had become concerned by acts of vandalism believed to be the work of the Mexican American youngsters. The police were asked to investigate and found that both gangs were involved; they competed to see which gang could be the most destructive. At first the Police Chief had difficulty persuading the community that there even was an Anglo gang in addition to the Mexican American gang. Then, according to the former Chief, local public officials called a meeting of the parents and the children and proposed that since most of the Mexican American boys had arrest records, charges should be filed against them, while the Anglo boys would receive discipline in the schools by being forbidden to to play basketball for three weeks or other such measures. Since all the boys had committed the same offenses, the Chief of Police insisted that all or none should be charged. As a result, no charges were brought against any of the young men. 13/

3. Harassment of Narcotic Addicts in Mexican American Communities

Members of the Commission staff heard numerous charges of harassment by the police of narcotic addicts in Mexican American neighborhoods in several Southwestern cities. 14/

In April 1968, a Mexican American resident of a city in New Mexico who had a record of narcotics arrests, arrived late for an interview with a Commission staff member. He stated that he was stopped by a sheriff's officer who began to search his car. He asked the officer if he had a search warrant, whereupon the officer took his pistol from his holster, pointed it at the man's head and said: "This is all the warrant I need."

A former narcotic addict in the same city, who reported being stopped frequently by the police for "investigation," told a Commission staff member that an officer who once stopped him asked for permission to search the back seat and trunk of his car. When he refused, the officer grabbed his car keys and proceeded to search the trunk of the car without permission. In some other

13/ New Mexico T., May 4, 1968 at 131-4.

14/ A Federal probation officer in a city in New Mexico said that most of the addicts under his supervision are Mexican American. In a city in Colorado Commission staff found that 70 percent of persons arrested in 1967 for drug offenses under State law were either Negroes or Mexican Americans.

Southwestern cities, individuals interviewed claimed that it was useless to protest a search without a warrant. Protests, Commission staff members were told, often result in arrests on minor charges.

A Federal probation officer in New Mexico speaking before the State Advisory Committee drew a depressing picture of the inability of narcotic addicts to escape from a cycle of unemployment, criminality, and addiction. In his opinion, continuous harassment by the police contributed to perpetuation of the cycle:

This is an everyday occurrence to be stopped and booked. It occurs to me that it is a continued cycle which I will describe to you. The individual on my caseload is an addict, he is not employed, thus, perhaps we think he is stealing to provide his habit and we want information. To continue the cycle, the police will pull him over, ask him, ... This would involve the calling of a wrecker for his car, and then it would always cost him \$10.00, \$15.00 or \$20.00 to redeem the car. They would book him for a matter of a day or two or three, and he would have to post a bond. Meantime, he has to borrow money from another addict or a relative, borrow enough for the bond and the car, not being employed. That night he goes out and steals ... a couple of colored TV sets or something to sell so he can pay off the bondsman and the car. This happens, in a matter of a month, two or three times to this addict, and frequently they don't go to court, they forfeit bond instead of going to court. Of course, they don't feel they are getting a fair shake, and it occurs to me that it is a continued cycle. They can't keep up so they continually steal and they are pressured to steal even more by the way they are treated by the police. 15/

15/ New Mexico T., May 4, 1968 at pp. 144-45.

A Federal probation officer in a Texas city told a Commission staff member about similar problems in his city. He said that many of the people under his supervision (mostly Mexican Americans) are constantly harassed by the police using vagrancy charges as a means of investigation. Often, he said, this causes the individual arrested to lose his job, which may have been difficult to get in the first place.

4. Police harassment interfering with attempts at community organization

Some of the most serious allegations of police harassment originated from events surrounding attempts by Mexican Americans to organize themselves in order to assert their collective power. In northern New Mexico, a proposed meeting set for June 1967 by the Alianza Federale de Mercedes was proceeded by threats of prosecution for unlawful assembly by law enforcement officials. 16/

As the members of the Alianza continued with the plans for their meeting despite the warnings of law enforcement officials, some of them were arrested on a variety of minor charges. Subsequently, a group of Mexican Americans attempted a citizen's arrest of the district attorney for Rio Arriba County at the courthouse in Tierra Amarilla. The attempted arrest resulted in the outbreak of violence. Two law enforcement officers were wounded and several people were reportedly held hostage.

Following this incident, it is alleged, Mexican Americans were arrested without warrants, homes were broken into and searched without warrants, persons were held incommunicado and an atmosphere of fear prevailed. Soon after the shooting in Tierra Amarilla, armed sheriff's deputies and national guardsmen surrounded the picnic grounds in Canjilon where the Alianza meeting was to be conducted and reportedly kept men, women and children in what was described officially as "protective custody" for more than 24 hours, without adequate shelter or drinking water. According to reports, there was no indication that any of these people were involved in the shooting or even knew about it.

16/ The background and events of the Alianza meeting of June 5, 1967, are the subject of a report of a subcommittee of the New Mexico Advisory Committee, July 10, 1967 and affidavits attached. See also The New Mexican Land War by Clark Knowlton, in THE NATION, June 17, 1968; and Tierra Amarillo Shootout by Ruben Dario Salaz, (1967).

Attempts by the United Farm Workers Organizing Committee (AFL-CIO, UFWOC) to organize farm workers in Starr County in Texas in 1966 and 1967, led to harassment of the union organizers by the Texas Rangers, according to a report of the Texas Advisory Committee to the Commission. The Committee reported that members of the UFWOC and other citizens active in the organizing campaign were subject to physical and verbal abuse by Texas Rangers and Starr County law enforcement officials. 17/

17/ The Administration of Justice in Starr County, Texas, a report prepared by the Texas Advisory Committee to the Commission on Civil Rights, June 1967. The Committee found that:

"On May 25 and 26, a Subcommittee of the Texas Advisory Committee held closed meetings in Rio Grande City. At these sessions, the Committee received information including sworn statements submitted by members of the United Farm Workers Organizing Committee, AFL-CIO (UFWOC) and other citizens. On the basis of this information, the Committee concluded that members of UFWOC and other citizens active in the organizing campaign have been denied their legal rights in Starr County. These denials included:

1. Physical and verbal abuse by Texas Rangers and Starr County law enforcement officials;
2. Failure to bring promptly to trial members and union organizers against whom criminal charges have been alleged;
3. Holding of union organizers for many hours before they were released on bond;
4. Arrest of UFWOC members and organizers on the complaints of growers and packers without full investigation of the allegations in the complaints. In contrast, law enforcement officials made full investigations before acting on complaints filed by members and officers of UFWOC;
5. Encouragement of farm workers by Rangers to cross picket lines;
6. Intimidation by law enforcement officers of farm workers taking part in representation elections;
7. Harassment by Rangers of UFWOC members, organizers, and a representative of the Migrant Ministry of the Texas Council of Churches which gave the appearance of being in sympathy with the growers and packers rather than the impartiality usually expected of law enforcement officers."

The Texas Advisory Committee noted that the majority of the workers and members of the Farm Workers Organizing Committee are Mexican Americans, who view the Texas Rangers as a symbol of oppression. The presence of the Rangers in Starr County, according to the Committee, served to aggravate tensions and raised questions as to the impartiality of law enforcement efforts. 18/

5. Complaint review procedures

Almost all of the law enforcement agency questionnaires returned to the Commission indicate that the only body to which complaints can be addressed is the law enforcement agency itself. In the overwhelming majority of cases, complainants are not informed of the results of the investigation of their complaints.

The fact that complaints have to be filed with the very organization of which the accused is a member was cited as a factor discouraging complaints by the Director of the American Civil Liberties Union Police Malpractice Center in a predominantly Mexican American area in a California city. He stated: "In the beginning, when the Center was established we tried filing at the local station; then we found it very unsatisfactory because we found that at the local station (they were) usually very hostile or defensive with the clients." 19/ Many persons interviewed stated that they saw no advantage in making complaints

18/ Id. p. 3. A young lawyer who worked in Starr County for the UFWOC described the relationship between the Rangers and Mexican Americans as follows: "The Rangers have little respect for the Chicano, and are intensely disliked by Mexican Americans throughout Southwest Texas; the dislike - and fear - is due as much to the Rangers' contemporary actions as to their past history. The traditional fear is so great that the mere presence of Rangers at a political or labor rally is usually enough to chill open and verbal opposition to the status quo." He also commented that: "With few exceptions, all State law enforcement officers act and dress - boots, stetsons, "western" clothes, revolvers in tooled, western style holsters and belts - so as to be as intimidating as possible." Civil Liberties Problems of Mexican Americans in the Southwest by Doran Willians, a paper prepared for 1968 American Civil Liberties Union Biennial Conference, p. 9.

19/ California T. at 70. A VISTA volunteer in a city in New Mexico, who had been stopped and searched by a policeman while he was driving through a "country club area" with a Negro child in his car reported a similar experience. He felt that the policeman had had no grounds to stop him and went to lodge a complaint to the police department. According to this young man, the desk sergeant who handled his complaint defended the action of the officer who stopped the volunteer's car and said that he really did not have a valid complaint. The young man got the impression that his complaint would receive no further attention.

of police mistreatment to the police. In Denver, Colorado the Mayor, after rejecting a proposal for a civilian review board, set up a "Mayor's Committee" to investigate complaints against the police. In the fall of 1967, a number of people, including some individuals associated with the Mayor's Committee, agreed that the Committee had been weak and ineffecutal. Commission staff members found that many of the people in the Mexican American community did not know about the Committee and its function, and those that did know about it had little faith in its ability to bring about change.

The New Mexico State Advisory Committee heard reports that civil rights complaints made to local FBI offices were investigated inadequately or in some cases were not investigated at all. In Texas, the FBI was accused of not properly investigating a case of alleged police brutality. A reinvestigation by Justice Department attorneys resulted in the filing of charges against the officer under a Federal civil rights statute.

6. Police retaliation against complainants

Commission staff also heard charges of police retaliation against Mexican Amerians who had complained about police harassment. In a city in New Mexico, a narcotics addict who had made a complaint against an officer reportedly was beaten by the officer about a month later in the elevator of the Police Department building. The officer allegedly remarked "so you want to complain about me to the lieutenant?" and added "You should be glad I didn't blow your head off." According to the complainant, he was charged and convicted of drunkenness but his sentence was suspended when his lawyer gave the judge a medical report on the injuries inflicted in connection with the arrest.

A resident of the Mexican American community in a California city alleged that the Sheriff's Department broke up an event at a neighborhood "Coffee House" which was organized to encourage young Mexican Americans to sign up for college. He said that a number of the participants were lined up and searched and several were given citations for selling coffee without a license. The Department reportedly did this in retaliation for assistance which the youths had given to a local organization which had picketed the Sheriff's station about an incident of alleged brutality. In Texas, a victim of police brutality reportedly was re-arrested on an old charge after he complained to the FBI about the local deputy sheriff.

7. July selection

A common complaint made to Commission staff members was the lack of representation of Mexican Americans on grand and petit juries. Only in a few localities were Mexican Americans considered to be well represented and even then only on petit juries. In some areas, it was alleged that the same Mexican Americans appear on the jury lists again and again.

A systematic study of jury discrimination was only undertaken in California and there it was limited to grand jury representation. As in California, grand jurors often exercise the dual function of indicting persons for crimes and investigating and evaluating the administration of local government. Exclusion of persons of a particular ethnic group or class from such grand juries thus bears important consequences even beyond impairing the fair and impartial administration of criminal justice. 20/ A study by California Rural Legal Assistance, Inc. of the 20 counties with the highest percentage of Spanish surname population showed underrepresentation of Spanish surname people on the grand juries of every county studied, and in 17 counties, the disparities were particularly marked. 21/

On 206 of the 224 grand juries studied in the 20 counties over a 12-year time period, the Spanish surname percentage of grand jurors fell markedly below the Spanish surname percentage of the eligible populations. 22/ In Los Angeles County with almost 500,000 Spanish surname residents only four had served as grand jurors during the 12 years studied 23/; while Orange County, California's fifth largest, could claim in 12 years but one Spanish surname person on its grand jury lists. 24/ In the opinion of the report's authors constitutionally prohibited discrimination against a group can be presumed where only one-third (3:1) of those eligible for grand jury service actually serve. 25/ The actual disparities in Colusa, Orange, Fresno, Kern, Madera and San Joaquin Counties were 16.1:1, 5.8:1, 11.5:1, 9.7:1 and 6.8:1 respectively. 26/

20/ The California Penal Code §§ 919 (b) and (c), 925, 928, 933-5 (West's Ann. Pen. Code, 1967, Cum. Supp.).

21/ California Rural Legal Assistance Report, p. 20-44 (hereinafter California Report).

22/ Id. at 39. The California State Legislature Assembly Interim Committee on Governmental Efficiency and Economy held hearings on the California Grand Jury System in September 1967 in which many witnesses, including former grand jurors, complained that California grand juries do not represent a cross section of the population.

23/ Id. at pp. 41-42.

24/ Id. at 42.

25/ Id. at 37-38.

26/ Id. Table VII, Ratio and Percentage of Exclusion Arranged in Order of Ratios. In these counties, 85 to 95 percent of the eligible Spanish surname population had been excluded from jury service.

In July 1967, the Texas Advisory Committee to the Commission was told of discrimination in the selection of jurors in two Texas counties:

"There is jury discrimination in the petit jury, the grand jury, and the jury commissioners in Nueces and Kleberg Counties. In the Molina precinct ... they had over 1,000 Latin American poll tax holders and we don't know how many property owners, because they are both entitled to serve, but not one single one ever had been called." 27/

Several persons in Texas alleged that the procedure for selecting grand jurors discriminates against Mexican Americans. Jury lists are made up by Jury Commissioners. 28/ The Commissioners are selected by the District Court Judges. It is alleged that under this system most jury commissioners are Anglos and the jurors picked are mostly Anglo, with the same few Mexican Americans serving year after year. The Texas statute which establishes this procedure was recently challenged in Rodriguez v. Brown, C. A. 68-2-6-SA, (W. D. Texas 1968), and

27/ The Civil Rights Status of Spanish Speaking Americans in Kleberg, Nueces and San Patricio Counties, Texas, a report by the Texas Advisory Committee to the U.S. Commission on Civil Rights, July 1967, p. 2.

28/ The procedures for selecting grand juries in Texas are established by Articles 18.01 through 19.08 of the Texas Code of Criminal Procedure, 1965. Article 19.08 sets forth the qualifications for a grand juror. " ... (1) He must be a citizen of the State, and of the county in which he is to serve and be qualified under the Constitution and laws to vote in said county, provided that his failure to pay a poll tax or register to vote in said county, provided that his failure to pay a poll tax or register to vote shall not be held to disqualify him in this instance; (2) he must be a freeholder within the State or a householder within the county or the wife of such a householder; (3) he must be of sound mind and good moral character; (4) he must be able to read and write; (5) he must not have been convicted of any felony; (6) he must not be under indictment or other legal accusation for theft or of any other felony." In Hernandez v Texas, 347 U.S. 475 (1954) the Supreme Court held that this method of selecting grand jurors is fair on its face, but a prima facie presumption that it was not applied consistently with constitutional standards for jury selection was raised where the county population was 14 percent Spanish surname and no Mexican American had served on a jury for 25 years. This presumption was not rebutted by the statement of Jury Commissioners that they did not discriminate in the selection of jurors.

U.S. v Hunt, 265 F. Supp 178 (W. D. Texas 1967) 29/

It is apparent from these cases that one of the problems in the selection of grand jurors arises from the fact that they are selected from among persons known to the jury commissioners pursuant to a "keyman" system. Jury commissioners are required to acquaint themselves with all sections of the community. 30/ Although, according to the opinion in the Hunt case, 31/ the jury commissioners in San Antonio have made conscientious and

29/ In the Hunt case, a criminal prosecution, one of the defendant's claims was that a jury panel which was 11 percent Spanish surname grossly underrepresented Bexar County's 36 percent Spanish surname population. However, the court found that only 14.5 to 17.5 percent of that population was eligible to serve as grand jurors under the Texas statute (above). On the basis of Swain v Alabama, 380 U.S. 202, the District Court held that the disparity shown in Hunt did not constitute such a disparity as to indicate discrimination. In the opinion of the court, the youth of the Spanish surname population (a large percent of which is under 21) and the small percentage of Spanish surname persons who completed six years of schooling (assumed to be evidence of ability to read and write English) account for the low percentage of Mexican Americans considered eligible to serve.

In Rodriguez, a civil suit by Mexican Americans against the judges and jury commissioners in Bexar County, the plaintiffs asked that a three judge court be convened to consider their claim of unconstitutional discrimination in the selection of grand jurors. The court denied the plaintiffs' motions but gave them an opportunity to submit further evidence in support of their claim. In its denial of plaintiffs' motion, the court relied heavily on finding in Hunt that no more than 17.5 percent of the Spanish surname population was eligible to serve. The defendants in Rodriguez showed that 28 percent of 13 grand jury commissions were Spanish surname persons and 16 percent of 13 grand juries were Spanish surname.

30/ See, for example, Rabinowitz v U.S., 366 F. 2d 34 (5th Cir. 1966).
31/ 265 F. Supp. 194-195.

systematic efforts to acquaint themselves with the Mexican American community in order to obtain a large number of names of potential Mexican American grand jurors, allegations of discrimination persist. The keyman system has inherent deficiencies in reaching all sections of the population for jury duty. The Federal Jury Selection and Service Act of 1968 provides for a random selection of jurors chosen from voter lists to implement Congress' declared policy "that all citizens shall have the opportunity to be considered for service on grand juries" and that every litigant have the "right to grand and petit juries selected at random from a fair cross section of the community." 32/

8. Bail bonds

There were numerous allegations that the system of bail bonds weigh unequally against Mexican Americans who constitute a disproportionate share of poor defendants. For example, in a city in Colorado, before the institution of a system of release on personal recognizance, a person who had committed certain traffic offenses had to pay \$25 to obtain a bond to get out of jail. Consequently, many Mexican Americans used to stay in jail until their trial date because they lacked the cash money to retain a bail bondsman.

Commission staff members learned that a Mexican American resident of a small town in New Mexico, for example, spent four days in jail after an automobile accident which did not involve personal injuries because he could not raise the \$175 bail which was set for him. This man had hit a calf late at night with his car and was charged with drunken and reckless driving. Although he was a lifelong resident of the town, the Justice of the Peace refused to release him on his own recognizance for four days.

Some Mexican Americans alleged that bonds were set discriminatorily high for them in some cases. Recently, several Mexican Americans involved in a public school protest demonstration were arrested in California. They were arrested late Friday afternoon and charged with a conspiracy to commit a misdemeanor. Bail was set at approximately \$12,500 each. These persons, who were school teachers and leaders of the Mexican American community, were unable to raise money for bond immediately and were forced to spend the weekend in jail, until they could receive a court hearing to seek a reduction of their bond. On Monday, their bail was reduced and eventually they were released on a bond of approximately \$250 each. 33/

32/ Jury Selection and Service Act of 1968, 62 Stat 951, 28 U.S.C. 1861 et seq.

33/ California T. pp. 247-250.

9. Language Problems

In 1963, the California Advisory Committee to the United States Commission on Civil Rights cited the problem of language differences and the effect it had on Spanish speaking people in their contacts with the police and the courts. The Committee said:

It appeared to the Committee, however, that while the Spanish speaking groups do not feel that their problems are exacerbated as the Negro's, their problems are complicated by the additional fact that many speak mainly Spanish. Often, apparently, Spanish speaking persons literally do not understand what is happening to them in contacts with the police, district attorneys, and some courts.

* * *

This language difficulty seems a real one to the Committee. It also appears that many law enforcement officials are not cognizant of it. 34/

Difficulties for Mexican Americans arising from lack of fluency in English were cited by many of the persons interviewed by Commission staff, including judges, lawyers and probation officers, as barriers to equal justice. In most cases, Mexican Americans dealing with law enforcement officials know enough English to communicate, but it often is questionable whether they understand their legal rights, such as their right to remain silent, especially when these rights are explained to them in English rather than in Spanish.

A Mexican American who has difficulty with English may experience other problems in his contacts with law enforcement officers. If he does not understand the officer's questions or commands a routine contact can escalate into an unnecessary arrest and detention. A 1967 report concerned with Mexican American and law enforcement relations in Los Angeles, cited an incident between a Spanish speaking Nicaraguan and a police officer which illustrates this problem as well as suggests the racist attitudes held by some law enforcement officers:

In April 1966, a Spanish speaking adult male and his friends were fixing a flat tire on the Hollywood freeway. A police officer stopped and asked what they were doing. The driver of the car fixing his tire with a cigarette in his mouth, looked at the police officer and did not answer as he could not speak English. The officer became very angry and demanded

34/ California Advisory Committee to the U.S. Commission on Civil Rights, Police-Minority Group Relations in Los Angeles and the San Francisco Bay Area, p. 37 (August 1963).

that he remove the cigarette from his mouth, stand up and show him some respect! The driver of the car smiled and continued to work on his tire. The officer became more angry, put him over the car and began beating him and calling him a "dirty Mexican." 35/

In some cases, injustices occur and law enforcement suffers because of the language barrier. In one case, a Commission staff member was told, a youth who was trying to quell a riot was arrested because the police, who did not understand Spanish, thought that he was trying to 'cite' one. 36/

A probation officer in Arizona reported an incident in his State illustrating that language disability not only can produce misunderstanding, confusion, and inappropriate reactions by the police but injustice in the courts as well. He related that in 1966, an intoxicated Mexican American struck his daughter for being tardy in obeying an order. His wife called the police and told them that her husband had assaulted their daughter. Apparently believing that the wife had reported that her husband had sexually assaulted his daughter, the police arrived with drawn guns. The father was taken before a magistrate and charged with sexually molesting his husband. Understanding little English and thinking he was being charged only with drunkenness, the husband made no objection to the charge. There was no interpreter present to explain the charge or help him to reply properly. He was then placed in the county jail for two months awaiting trial because he could not afford the high bond that had been set. Eventually, the probation officer, who had a heavy caseload, was able to interview the defendant and converse with him in Spanish. Upon learning the facts the probation officer explained the situation to the magistrate, who dismissed the case.

10. Attitudes toward the administration of justice

Many Mexican Americans are fearful and hostile towards the police and distrustful of the courts. People reportedly subject to harassment by the police in a city in New Mexico told a Commission staff member that they were afraid to leave their homes for fear of being arrested. Mexican American youths in a California city reportedly were afraid to hold a dance in a settlement house for fear of having the police break up the dance and arrest them. A number of people throughout the Southwest said that they were unwilling to complain about police abuse for fear of retaliation. Commission investigators also heard that many Mexican American defendants have a tendency to plead guilty or forfeit bond even though they believe that they are innocent.

35/ A. Morales, Historical and Attitudinal Factors Related to Current Mexican American -- Law Enforcement Concerns in Los Angeles, p.7 (April 22, 1967).

36/ Out of 146 respondent law enforcement agencies, only 6 said that they provided Spanish courses for their Anglo officers. USCCR Questionnaire, answers to Question IV D. For the employment figures on Mexican American officers, who are presumably bilingual, see infra.

Among younger Mexican Americans particularly, there is evidence of outright hostility towards law enforcement officials as well as fear. Lately, there have been some sporadic attacks on policemen in the Southwest. Although several cities have established police-community relations units, these are believed by Mexican Americans to be public relations units only, designed to "sell" the police department and to obtain information for it rather than to promote understanding for the community in the department.

In one California city, Mexican Americans accused the police-community relations unit of the police department of being an agency designed to infiltrate the Mexican American community. Several persons alleged that the information which led to the arrests of the leaders of a school protest demonstration was obtained by the police-community relations unit of that city. 37/

Police-community relations units are not yet very common in the Southwest. Out of 232 agencies responding to the Commission's questionnaire, 35 reported that they have such units. Another 32 reported plans to establish one. The units now established employ 151 men, of whom 25 are Mexican Americans. 38/

11. Employment of Mexican Americans in law enforcement agencies

The Commission also inquired into the practices of police departments in employing Spanish surname persons. The Texas law enforcement agencies responding to the Commission questionnaire showed a rough correlation between a substantial Mexican American population (over 40 percent) and the employment of more than a token number of Mexican Americans in the local police force. According to a preliminary assessment of the answers to the questionnaire, where the Mexican American population is less than 40 percent, there are generally very few or no Mexican Americans employed by law enforcement agencies. Approximately 7.4 percent of the total uniformed personnel in 232 agencies in the Southwest responding to the questionnaire thus far are Mexican Americans. In 1960, about 12 to 14 percent of the Southwest's population was Mexican American. The Texas Rangers, an elite 135 year old statewide law enforcement agency under the Texas Department of Public Safety, currently employs 62 men. None of these 62 men is a Mexican American and few Mexican Americans have ever served on the Rangers.

37/ The acting commander of a police-community relations unit told the California State Advisory Committee that he was required to keep the police chief fully informed of every meeting that he attended, including the names of persons who voiced complaints against the police, California T. p. 240. However, the police-community relations unit did not seem to be able to effectuate any changes in the policies of the department, even if they were having a clearly detrimental effect on community relations. Id., p. 240-251.

38/ USCCR Questionnaire, answers to Question V B.

Employment of Mexican Americans in a law enforcement agency does not guarantee just treatment of citizens. Several complaints charging use of excessive force were made against Spanish surname law enforcement officers. Some persons interviewed stated that Mexican American policemen tend to be more brutal towards Mexican Americans to gain acceptance by their Anglo fellow officers and to be "one of them."

Few Mexican Americans are in policy-making positions in law enforcement agencies. Out of 171 agencies responding to employment questions on the Commission's questionnaire only 10 are headed by a Mexican American and 8 of these are in towns of less than 10,000 in population. 39/

39/ Id. Attachment A.

[Excerpt from Columbia Journal of Law and Social Problems]

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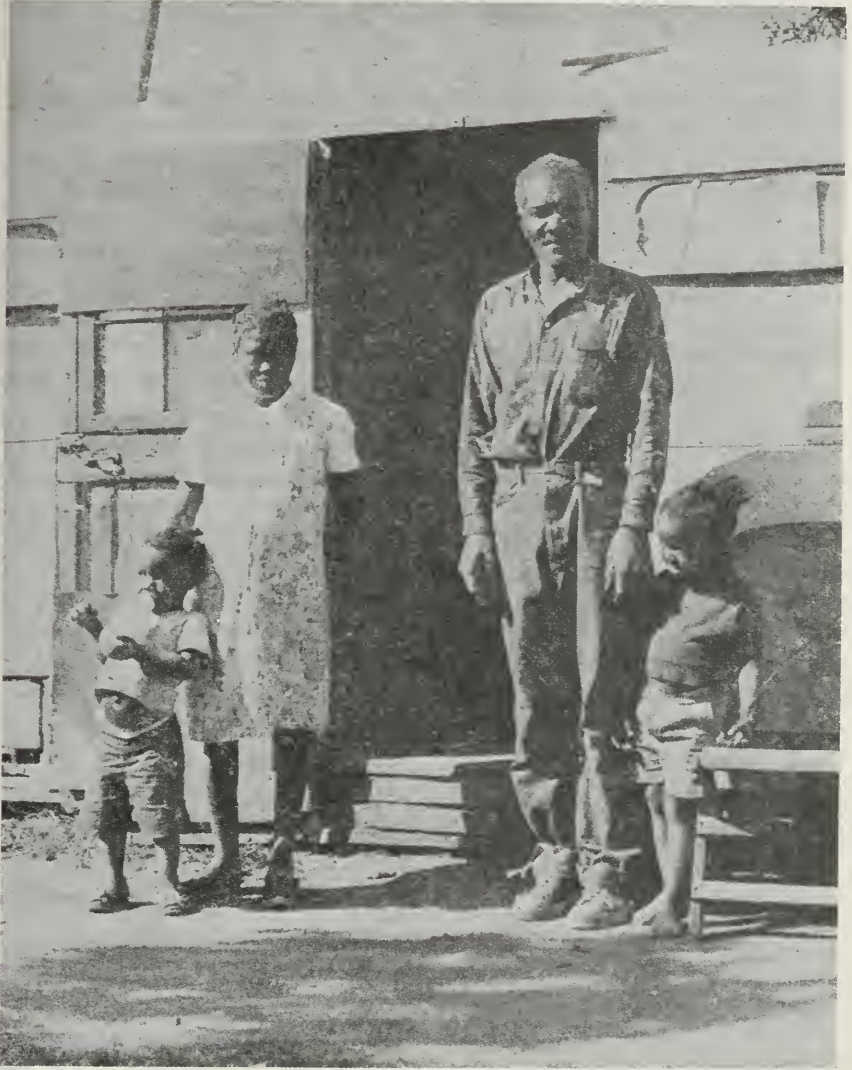
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The Editors wish to thank Professor David Caplovitz of the Columbia University Bureau of Applied Social Research for his assistance with articles in this edition.



An apple harvester from Florida and his family outside their labor camp home on Mud Lane Road in Sodus, New York. September 12, 1967.

Migrant Farm Labor in Upstate New York*

This article reports the findings and recommendations of Jeffrey Hoffman and Richard Seltzer, editors of the Columbia Journal of Law and Social Problems, who spent four weeks during the August-September, 1967, harvest season touring farms, orchards, and migrant labor camps in Chautauqua, Wayne, and Cattaraugus Counties in upstate New York. The editors met and conversed with numerous growers, crew leaders, migrant workers, State officials, and others acquainted with migrant farm labor conditions. Unannotated quotes and statements of fact are attributable to the editors' personal observations. The Columbia Journal of Law and Social Problems wishes to thank the many persons who aided in the preparation of this article. Research for this article was conducted with the aid of a grant from the New World Foundation, receipt of which is gratefully acknowledged.

CONTENTS

I. A THOUSAND MILES TO HELP WITH A HARVEST	2
II. THE MIGRANT EMPLOYMENT SITUATION	4
A. New York's Seasonal Demand for Farm Labor	4
B. Joining Migrants and New York Growers	5
C. Absence of Bargaining Over Wages	7
D. Legislation to Moderate Crew Leaders' Power	9
E. Migrant Earnings	13
F. The "Free Labor Market"	19
G. The Possibility of Unionization	21
III. LIVING CONDITIONS	23
A. Quality of Existing Conditions	23
B. Housing Regulations	25
C. Sanitary Regulations	30
D. Enforcement Practices	34
IV. APPLICATION OF SOCIAL LEGISLATION	38
A. Welfare Laws	38
B. Workmen's Compensation	41
C. Unemployment Insurance	41
V. EDUCATION OF MIGRANT CHILDREN	42
A. Culturally Disadvantaged Children	42
B. Structuring Pre-school Education	43
C. The Regular School Curriculum	45
VI. CONCLUSION	46
A. Migrants: Exploited and Unprotected	46
B. Better Use of Existing Remedies for Migrant Problems	47
C. Improved Laws Regulating Migrant Farm Labor	48
D. Need for Immediate Improvement	48

* This article also appeared in a Supplement to the *Columbia Law School News*, March 27, 1968.

I. A THOUSAND MILES TO HELP WITH A HARVEST

American agriculture is one of the most increasingly efficient and productive sectors of the national economy. In the twentieth century there has been a steady reduction in the percentage of Americans who must work on farms to grow and harvest the nation's food. Americans spend a smaller part of their incomes for food than do the citizens of any other country.¹ This success, however, does not always inure to those whose toil sustains it. The nation's migrant farm laborers are mired in a "culture of poverty" while the fields around them produce an abundance unequalled in man's history.

New York, the seventh largest employer of migrant labor in the country,² in 1967 depended on 17,000 interstate migrant farm workers.³ Most of New York's migrant workers are recruited in Florida or Puerto Rico. Usually, they are people whose fathers have been sharecroppers or tenant farmers.⁴ In New York they may work only three weeks during the harvest peak, or they may be in the State working intermittently from May to November.

Migrant labor is tough, monotonous work. It is stooping and crawling to plant or pick strawberries, tomatoes, and potatoes, and climbing to pick apples and pears. It means harvesting cherries under a hot sun and picking grapes at eight in the morning when the vines are sopping wet with dew and a bone-chilling wind is gusting in from Lake Erie.

When observed around their camps, migrants seem docile to the point of lethargy. Migrants are also slow to criticize their employers or to complain about working conditions because they do not wish to jeopardize their jobs. Except for some migrants from Puerto Rico, no migrant is protected from summary dismissal at the hands of the grower who employs him or the boss of the crew with whom he travels. This combination of docility and insecurity allows employers to exploit migrants' labor with little opposition.

Migrants usually travel in crews of 20 to 100 or more. Most are recruited, led, and bossed by crew leaders, entrepreneurs who often dominate the lives of crew members and their families. When recruiting migrants for work in New York, crew leaders often make exaggerated representations concerning wage rates. Moreover the crew leaders often fail to disclose that a lengthy period of unemployment is certain to occur for many crews between the end of the cherry harvest and the beginning of the apple harvest. These practices

1. Farm output per man-hour climbed 61 per cent between 1959 and 1967. *Wall Street Jour.*, Jan. 14, 1968, at 14, col. 4.

2. California, Florida, Michigan, Texas, Washington and Oregon employ more migrants at various times of the year. SUBCOMM. ON MIGRATORY LABOR OF THE SENATE COMM. ON LABOR & PUBLIC WELFARE, *THE MIGRATORY FARM LABOR PROBLEM IN THE UNITED STATES*, S. REP. NO. 71, 90th Cong., 1st Sess. 44-55 (1967) [hereinafter cited as SENATE REPORT].

3. This figure was measured at the annual peak in September 1967. Letter from Richard K. Klatt, New York State Sup't of Farm Employment, to the *Columbia Journal of Law and Social Problems*, Dec. 5, 1967.

4. E. Koos, *THEY FOLLOW THE SUN* 14 (Florida State Board of Health, Monograph No. 1, 1957).

and other abuses by crew leaders of their dominant position are not adequately regulated by the existing federal and State laws.

Crew leaders are paid in proportion to the amount of crops picked by their crews and the number of workers they supply, not in proportion to the wage rates paid to their crews. The crew leaders thus have little motivation to bargain for increases in migrant pay. Since there is no one else to intercede for the migrants and since their individual bargaining power is weak, migrant wage rates are set unilaterally by growers. In 1967, migrants at work in New York fields earned \$10 to \$14 a day. Even when they supplement their income with non-farm earnings during winter months, migrants' yearly incomes average only \$2,800.⁵ The earnings of migrants are chronically depressed partly because the type of protection afforded by existing minimum-wage laws is inadequate. Unemployment insurance is not available to agricultural workers, and migrants have no reliable income when there is no work. Low earnings and month-long periods of unemployment often leave migrants sufficiently destitute during their stay in New York to qualify for welfare benefits. Some local welfare officials, however, reportedly discourage migrants from applying for welfare assistance. The practices of New York's Social Services Department in making benefits available to migrants have not been satisfactory and need improvement.

Growers use migrants only to perform menial farm tasks. When skill is required, such as that needed to drive a tractor or to operate a mechanical picker, the growers call upon their regular employees. Mechanization is increasingly relied upon on New York farms and each year causes migrant employment to fall by about four per cent.⁶

Migrants are excluded from federal and New York laws protecting the right of workers to organize and bargain collectively. This omission impairs the ability of existing labor unions to aid migrant workers. Unionization of migrant workers would be one route to improved conditions though it might accelerate both the trend to mechanization and the decline in migrant jobs.

During their stay in New York, migrants live in housing provided by growers. Some growers provide cinder-block buildings with central heating and dormitory-like layouts. One grower provides only the shells of twenty-year-old buses. Either form of accommodation may satisfy the applicable New York law. The most serious defects in the New York law governing migrant housing are: (1) the inadequate minimum floor space provisions; (2) the lack of any special requirements for facilities to be occupied by fam-

5. This is the average income of those who work more than 24 days per year in farming and who are not financially dependent on anyone else. U.S. DEP'T OF AGRICULTURE, *THE HIRED FARM WORKING FORCE OF 1966—A STATISTICAL REPORT* 16-19 (1967); see notes 41-50 *infra* and accompanying text.

6. N.Y. DEP'T OF LABOR, 1957-66 FARM LABOR ANN. REPS. (1958-67); Letter from R. K. Klatt, *supra* note 3. In 1957, there were 28,000 migrants in New York State at the September peak. N.Y. DEP'T OF LABOR, 1957 FARM LABOR ANN. REP. (1958). In 1967, there were 17,000 at the September peak. Letter from R. K. Klatt, *supra* note 3.

ilies; (3) unsatisfactory regulations pertaining to kitchen and sanitary facilities. New York State health officials, who are often unsympathetic with the housing needs of migrants, fail even to enforce existing standards.

While parents work in the fields, the children of migrant families are either left at home at the labor camps or are bused to Child-Care Centers or Migrant Summer Schools. If left at the camps, the children will usually find no recreational facilities—not even a swing, slide or sand box. Migrant children move with their parents through several states during the school term. This constant travel creates interstate education problems which complicate further the difficulty of educating these culturally disadvantaged children.

The attitude of growers is also a serious obstacle to improvements of migrant living conditions. Growers sometimes say that migrants are happy with what they receive and do not deserve more because they are lazy and unreliable. This view is usually little more than an excuse for underpaying and poorly housing migrant workers.

The sources of migrant poverty are different from those facing other poverty groups in the country. Workers who travel a thousand miles, usually without any guarantees regarding work or wages, have problems of job security not found in more conventional labor situations. Unlike indigenous poor, migrants are only in New York temporarily and citizens of the communities through which they pass tend to ignore their problems. The temporary nature of the migrants' stay is also a disincentive to investment in decent housing and hampers the effectiveness of educational programs. Thus, the problems posed by migrant poverty are unique and suggested solutions must be tailored accordingly.

New York has been a leader in progressive social legislation. Its efforts regarding migrants, however, have shown a lack of vigor in planning and execution. New York should endeavor to improve its own programs and to encourage interstate and federal cooperation to meet the needs of migrants. Without such imaginative leadership migrants will continue to be condemned to a life of poverty and insecurity.

II. THE MIGRANT EMPLOYMENT SITUATION

A. NEW YORK'S SEASONAL DEMAND FOR FARM LABOR

It is impossible at present for New York's growers to avoid needing many more workers during the summer and early fall than they can employ year-round. The State's harvest and pre-harvest activities require more than 48,000 "seasonal" workers—workers whose employment during the rest of the year is non-existent or so flexible that they are free to accept limited-duration harvesting jobs.⁷

7. Forty-eight thousand is the peak seasonal employment of paid and unpaid workers. See U.S. DEPT OF AGRICULTURE, *THE FARM LABOR SITUATION IN SELECTED*

On relatively small farms the grower solves the seasonal labor problem by having his wife and children "pitch in" at harvest time. One-third of the seasonal farm workers in New York are unpaid members of the growers' families, as are three-quarters of the total non-seasonal labor force.⁸ It is the larger farms which need outside help. These farms require the assistance of a seasonal labor force that is nearly one-and-one-half times larger than their year-round hired force.⁹ Approximately 31,000 extra workers are hired to work on New York farms during the summer and early fall. While many of these 31,000 workers come from the immediate locality of the farms (39 per cent), the majority are migrants from out of state (55 per cent). The remainder are intrastate migrants (*i.e.*, the work takes them away from home overnight) and foreigners.¹⁰

The locals are most often adolescents, housewives, and men who lack any regular employment. Though growers prefer to hire locals because they need not be provided with housing, the supply of local labor is definitely limited. Unemployment in New York regularly dips to its lowest point of the year during the peak of the harvest.¹¹ Attempts to lure additional workers from urban centers, such as New York City, have generally failed.¹² Since local labor pools are not adequate, growers must go outside the State for migrant labor to satisfy seasonal demand.

The difficulties of arranging to hire persons living out of the State and the need to house them when they arrive for work tend to make the employment of migrants a costly and complex process. The difficulties of employing migrant labor are mitigated, however, by three factors: (1) migrants are willing to perform strenuous manual labor for relatively small compensation; (2) they are usually experienced in harvesting; and (3) many aspects of recruiting and managing migrants are handled by the migrants' own bosses, the so-called "crew leaders." Consequently, from the beginning of May until the end of September each year, 17,000 migrants arrive in New York by bus, car and airplane.¹³

B. JOINING MIGRANTS AND NEW YORK GROWERS

Hiring migrants, most of whom come from Florida and Puerto Rico, requires special arrangements for recruitment made well in advance of the seasonal peak demand. It also requires New York growers to compete for labor with the other "east coast migrant demand states." Although recruitment at a distance and competition for labor are inconvenient for New York

STATES, 1965-66, at 52 (1967), and N.Y. DEP'T OF LABOR, 1966 FARM LABOR ANN. REP., 45 (1967) (extrapolation).

8. Computed from U.S. DEP'T OF AGRICULTURE, THE FARM LABOR SITUATION IN SELECTED STATES, 1965-66, at 52 (1967).

9. *Id.*; N.Y. DEP'T OF LABOR, 1966 FARM LABOR ANN. REP. 45 (1967).

10. Letter from R. K. Klatt, *supra* note 3.

11. N.Y. DEP'T OF LABOR, 1966 FARM ANN. REP. 9 (1967).

12. *See id.* at 45 (intrastate figures).

13. Letter from R. K. Klatt, *supra* note 3.

growers, the disadvantages of long-distance hiring work a greater hardship on the migrants. The machinery which operates to bring southern migrants and northern growers together is almost entirely grower-oriented.

1. *Puerto Rican "Contract Workers."* Three methods exist for the hiring of migrant farm labor. Each method is identifiable with the type of worker being hired: crew worker, non-crew worker, and Puerto Rican "contract worker." Of these, only the Puerto Rican contract worker benefits from a hiring method calculated to protect his interests. The Puerto Rican government annually negotiates standard-form contracts for about 900 of the island's citizens coming to New York to do seasonal farm labor.¹⁴ The contracts guarantee to the workers round-trip air fare between San Juan and New York if they stay the full summer, the equivalent of 160 hours of hourly pay in every four weeks they are in the State, and free lodging. Furthermore, Puerto Rico keeps a representative in Rochester, New York during the summer to check on observance of the contract terms. This relatively comprehensive protection, however, covers only five per cent of New York's migrants. Even with this protection, Puerto Rican workers are poorly paid.

2. *Non-Crew Workers.* Non-crew workers account for 53 per cent of the migrants in the State.¹⁵ This group is comprised mostly of Negroes from Florida and non-contract Puerto Ricans. Some growers contact non-crew workers directly in Florida or Puerto Rico in the spring. Others maintain contact with the previous season's workers by mail and telephone. Relations between growers and non-crew workers are very informal: no contracts are signed; no hours of pay are guaranteed; wages are paid at whatever rates prevail in New York during the season; and the workers pay for their own transportation, though growers sometimes provide advances to cover travel expenses.

3. *Crew-Affiliated Workers.* The remaining 42 per cent of the migrants are affiliated with crews. To obtain the services of crew-affiliated migrants, growers need only contact one man, the crew leader. To assist the growers in contacting crew leaders, Florida, in cooperation with the United States Department of Labor and the Farm Employment Services of 17 eastern states, annually conducts the Florida Pooled Interviews. Held in April in several Florida cities, the Pooled Interviews bring together (a) Farm Employment Service officers of the Departments of Labor of 17 states—each carrying worker requests from growers in their home states, and (b) about 630 migrant crew leaders representing more than 30,000 workers.¹⁶ Since the Pooled Interviews involve only government officials and crew leaders, growers and

14. U.S. DEP'T OF LABOR, FARM LABOR DEVELOPMENTS, EMPLOYMENT AND WAGE SUPPLEMENT, Oct. 1967, at 3.

15. Letter from R. K. Klatt, *supra* note 3.

16. N.Y. DEP'T OF LABOR, 1966 FARM LABOR ANN. REP. 18 (1967). Every state department of labor has a Farm Employment Service established pursuant to federal instruction. See 20 C.F.R. § 602 (1967).

crew-affiliated migrant laborers deal with one another here only through intermediaries.

The crew leaders are highly controversial middlemen who conclude unwritten agreements to deliver a definite size crew of migrants at a specific time to specific growers anywhere along the Atlantic coast migrant stream.¹⁷ Based on commitments made either at the Florida Pooled Interviews or independently, the crew leaders assume responsibility for recruiting a crew of workers to come North. Starting with a nucleus of 20 to 90 per cent of his previous season's crew, the crew leader recruits as many additional workers as he needs to fulfill his obligations to growers. The crews travel North, usually in buses owned by the crew leaders or in second-hand cars owned by the migrants. The average crew size in New York is about 30 workers,¹⁸ though crews with over 50 are not uncommon, and there are a few in New York with over 100.¹⁹ While many crews travel with all members of the family accompanying the workers, others, especially the Puerto Rican crews, come only with male workers. Some of the crews travel together the entire year and some work together only during the summer and early fall. Some work one New York farm from July 4 to November 15, and some work four different jobs in four states during the same period.

Like the crews they assemble, the crew leaders are either Negro or Puerto Rican. Generally the crew leaders have little more education, but a great deal more initiative, than the average crew member. As crew leaders they earn \$10,000 to \$30,000 annually, mostly on commissions for selling labor.

Migrants often call their leader "crew boss," a term which describes the interrelationship well. A crew leader is never elected by his crew and, except for the workers' freedom to quit, a crew leader's control over the migrants once they join up with him is almost absolute. Crew leaders are controversial figures. They are sometimes accused of indulging in profiteering at the workers' expense. The loose, non-contractual definition of the crew leaders' duties to his crew and the heavy dependence of the crew upon the leader creates possibilities for such abuse.²⁰

C. ABSENCE OF BARGAINING OVER WAGES

Because crew-bound migrants have no direct dealings with the grower-employers they are dependent on their crew leaders to secure them jobs which pay a living wage. Unfortunately for the migrants, the crew leaders rarely

17. There are two other migrant streams in the United States, one in the mid-west and one on the Pacific coast. SENATE REPORT, *supra* note 2, at 4.

18. N.Y. DEP'T OF LABOR, 1966 FARM LABOR ANN. REP. 17 (1967).

19. See FARM SERV. REV., Jan. 1966, at 56 (letter to the editor from Merle W. Stout, N.Y. Farm Employment Supervisor).

20. See T. MOORE, THE SLAVES WE RENT 25-34 (1965); Washington Post, Aug. 20, 1967, at A9, col. 1. See generally, L. SHOTWELL, THE HARVESTERS (1961).

bargain aggressively on the migrants' behalf with either the growers or the growers' representative at the Pooled Interviews.

1. *Pre-Designated Orders.* Despite the appearance of a massive confrontation between the representatives of employers and the representatives of the workers, the Florida Pooled Interviews occasion very little competition over migrant wages. The main reason for this is that much of the labor has been spoken for before the start of the Interviews. About 70 per cent of New York's crew labor is lined up in private negotiations between growers and crew leaders before the Pooled Interviews.²¹ Usually these private negotiations result in no more than an informal agreement between a grower and a crew leader. As with the non-crew labor, no contract is signed. If wages are discussed, it is only to say that the grower will pay the prevailing wage in New York, whatever that turns out to be as the summer progresses.

This absence of wage negotiation is contrary to the intent of a section of the New York Labor Law which was designed to force wage terms to be agreed upon before the migrants arrived in New York and preferably before they were recruited.²² The statute requires that migrants be given wage information in writing "preferably at the time of recruitment, but in no event later than the time of arrival in this state."²³ Crew leaders and growers pay lip service to the law by merely agreeing to a minimum figure, below what is expected to be paid. Thus avoided, the law fails to impel early wage negotiation and fails to provide migrants coming to New York with a true picture of what pay to expect when they arrive.

2. *Open Orders.* Very little wage negotiation occurs at the Pooled Interview, even on the 30 per cent of the job orders designating no crew with which private arrangements have already been made. On these "open orders," the New York representative at the Interviews performs the job of finding crew leaders who will agree to bring the requested amount of labor to the growers who submitted the orders. These crew leaders also understand that their crews will receive the prevailing wage during the summer and are content with the minimums stated on the job order. Thus on both the "open orders" and the "pre-designated orders" the crew leaders fail to negotiate over wages before agreeing to bring a crew of migrants north to New York.

For the migrant, this system of setting wages is economically disastrous. Though most of them know that they will not earn much as migrants, some workers joining a crew for the first time are not aware of how low their pay will be. According to some first-year migrants in New York, their crew leaders not only failed to explain when recruiting that the true wage rate had not yet been fixed, but had promised wage rates far higher than what was

21. Though the grower may still send a "job order" to the New York representative going to the Pooled Interviews, it is a "pre-designated order." If the crew leader which such order pre-designates appears at the April Interviews, the New York representative merely seeks to confirm the prior agreements.

22. N.Y. LAB. LAW § 212-a(2)(b) (McKinney 1965).

23. *Id.*

eventually paid. These migrants also claimed that crew leaders had exaggerated the number of days of work which would be available. If wages were more definitely negotiated before crew recruiting began, federal or state laws could attack part of this deception by requiring that the crew leaders give potential recruits written promises to pay the agreed-upon wage rates.

Growers may claim that they cannot set wage rates before they know the price which crops will bring. The growers, however, bind themselves to many other costs before crop prices are determinable. Such costs include seed, land rental, machine rental, and fertilizer. The notion that hired labor should be the only element in farm production which bears the burden of indefinite crop prices is hard to justify. If growers and crew leaders arrived at an announced wage rate before the season began, wages could take their place alongside other fixed costs as a determinant of market prices and migrants would be assured of their wage rate before they traveled to New York.

Although the indeterminacy which the present wage system creates for some new migrants is unfortunate, the worst aspect of the system is that it deprives the migrants of bargaining power. Not until after they have traveled a thousand miles from home and are camped in housing provided by their grower-employer does the grower get together with other growers to set wage rates. At this point, there is virtually nothing the non-unionized migrants can do to influence wages.

Nothing compels or encourages the growers to enter into effective wage negotiations with anyone on behalf of crew-affiliated migrants. Although crew leaders nominally represent the migrants, they have no incentive to protect the migrants' best interests. Crew-leader remuneration is negotiated independently of worker wages; the growers compensate crew leaders mostly through fees which are in proportion to the number of workers they deliver and the amount of work which their crews complete. Some crew leaders make additional money by renting trucks to growers and by supervising their crews' work in the fields. Some profit by operating various legal and illegal food, beverage, and gambling concessions in the labor camps. Consequently, except for greater ease in recruitment, higher worker wage rates do not affect the crew leaders financially. Since crew leaders are in business almost solely for their own benefit, they have no incentive to defend the workers' interest in higher wages.

D. LEGISLATION TO MODERATE CREW LEADERS' POWER

The cultural background of most migrants does not nurture a strongly motivated, assertive individual who is likely to protect himself adequately in a situation where his rate of pay is at stake. In this sense, the bargaining-strength of the migrants *vis-a-vis* the growers is minimal even without the intercession of the crew leader. Crew leader unwillingness to press for higher wages therefore aggravates an already weak position.

Recognizing the vulnerability of the migrants and their history of being abused, Congress acted in 1964 to protect them from "certain irresponsible" crew leaders who were using the channels of interstate commerce to "exploit" migrants, growers, and the public generally. The law Congress passed is "The Farm Labor Contractor Registration Act of 1963."²⁴ The Act creates federal penalties for crew-leader corruption and outlaws practices of crew leaders which were already probably illegal under state law.

Under the Federal Act, no person may act as a crew leader without registering with the United States Department of Labor. Control over registration is the basic sanction used to enforce the Act. The Secretary of Labor can deny certification to any person not meeting the standards of eligibility and renewal can be denied or present registration revoked for failure to meet the standards prescribed by the Act.

One provision of the federal law authorizes refusal of certification to anyone with a record of criminal activity which casts doubt on his competence to handle the responsibilities of a crew leader.²⁵ The Act names three specific criminal activities which many persons knowledgeable about migrants claim are frequently indulged in by crew leaders. They are crimes "relating to gambling or to the sale, distribution, or possession of alcoholic liquors in connection with . . . [a crew leader's] activities as a farm labor contractor . . . or prostitution."²⁶ These crimes involve taking the migrant's money and are often coupled with overpricing or deception. Such offenses are difficult to uncover unless there is frequent policing of migrant camps or the members of the crews are willing to testify against the crew leaders. Since neither element of effective enforcement is currently present, it is doubtful this provision will have substantial impact on illegal practices of crew leaders.

Another provision, more easily enforced, requires that insurance be in force on all vehicles used by the crew leader to transport migrants.²⁷ With the help of insurance companies, this requirement should reduce the number of serious accidents caused by the poor equipment that crew leaders sometimes use to transport migrants.

The only important provision of the Federal Act touching the wage issue is Section 6(b),²⁸ which requires that every crew leader shall

ascertain and disclose to each worker at the time the worker is recruited the following information to the best of his knowledge and belief: (1) the area of employment, (2) the crops and operations on which he may be employed, (3) the transportation, housing, and insurance to be provided him, (4) the wage rates to be paid him, and (5) the charges to be made by the contractor for his services.

To help enforcement, the Act provides in Section 5(b)(2) and (4) that giv-

24. 7 U.S.C. §§ 2041-53 (1964).

25. Farm Labor Contractor Registration Act § 5(b)(7), 7 U.S.C. § 2044(b)(7) (1964).

26. *Id.*

27. *Id.* § 5(a)(2), 7 U.S.C. § 2044(a)(2) (minimum coverage is \$5,000/\$20,000).

28. *Id.* § 6(b), 7 U.S.C. § 2045(b) (1964).

ing false information or failing to live up to any "working arrangements [a crew leader] has made with migrant workers" is grounds for refusal or revocation of a crew leader's registration.²⁹ Although these sections do not require bona fide wage negotiation, they do attack the practice of some crew leaders of luring migrants into crews with false promises. This fraud especially entraps young people who have never been migrant laborers before.

In these disclosure requirements, the Act did not go far enough. The Act should have required the crew leader not merely to disclose, but to state in writing the required wage and working-condition information and to give a copy to each potential recruit. This would discourage misstatement and non-disclosure by creating better evidence of what communication occurred.³⁰ A written communication is more likely to give the migrant full awareness of what to expect than an oral communication.

Written disclosure of information at the time of recruitment could be required by the Secretary of Labor under the implementing authority given him by Section 14 of the Act.³¹ This Section authorizes the Secretary to make rules "necessary for the purpose of carrying out the provisions of . . . this Act." New York has a requirement that crew-leader disclosures be in writing, but it is not enforced.³²

Furthermore, the Secretary of Labor should require, under Section 14,³³ that crew leaders list "expected periods of work" in addition to the items now required to be disclosed by Section 6(b).³⁴ Disclosure of expected periods of work would, for example, prepare crews being brought into north-central New York for the three to four week hiatus in work between the cherry and apple harvests.

Also, the Secretary should require that the wage rate disclosures be broken down into at least three parts:

- (1) The hourly rate expected to be paid,
- (2) The piece rates expected to be paid on each crop, and
- (3) The expected piece rates converted into estimated average daily (9 hours a day) earnings of a first-year worker.

The conversion of expected piece rates into estimated daily earnings is espe-

29. *Id.* §§ 5(b) (2), (4), 7 U.S.C. §§ 2044(b) (2), (4) (1964).

30. Poor evidence may now be hampering enforcement. Of 353 investigations into suspected violations of the Act, most have concentrated on ferreting out complete failures to register. In only a few instances was there sufficient proof of a violation of the obligation to disclose to encourage the Labor Department to take legal action against the crew leader. SENATE REPORT, *supra* note 2, at 27-28. A bill introduced in 1968 in the N.Y. Legislature would require growers or crew leaders to enter into written contracts with all migrants before they are brought into the State. S. Intro. 2006, A. Intro. 377, N.Y. LEGIS. REC. & INDEX (1968).

31. Farm Labor Contractor Registration Act § 14, 7 U.S.C. § 2053 (1964).

32. N.Y. LAB. LAW § 212-a(2) (b) (McKinney 1965).

33. Farm Labor Contractor Registration Act § 14, 7 U.S.C. § 2053 (1964).

34. *Id.* § 6(b), 7 U.S.C. § 2045(b) (1964). "Length of employment" would be part of the written contract required under a bill introduced in 1968 in the New York legislature. S. Intro. 2006, A. Intro. 377, N.Y. LEGIS. REC. & INDEX (1968).

cially important since piece rates (wages paid on the basis of the quantity of work done) are meaningless without knowledge as to how much can normally be picked in a day. Because first-year migrants lack the experience required to convert piece rates into daily earnings, this information should be presented in terms of what the earnings of a first-year migrant normally will be. It could be left as optional for the crew leader to list also a conversion of piece rates into the average daily earnings of an experienced migrant.³⁵

Both the Federal Act and the New York Labor Law require that wage data be "posted at all times in a conspicuous place in any camp."³⁶ Each law also requires crew leaders to give the migrant a detailed record of his earnings with each pay envelope.³⁷ The posting requirements are not adequately enforced. In some camps no wage information is posted at all.³⁸ Moreover, federal and State officials now permit mere posting of the minimum rates agreed upon before the start of the season. This widespread practice of posting the irrelevant minimum rates frustrates the purpose of the posting laws by hiding the true wage information from the workers. In addition, the posting of inaccurate information creates discontent among the workers over misconceptions of what the farmer is supposed to be paying.

As with the posting requirement, lack of adequate compliance and enforcement is a general problem with the crew leader laws. The United States Senate Subcommittee on Migrant Labor reported in March 1967:

The enforcement of the registration provisions of the [federal crew leader] act continues to be a serious problem due largely to the difficulty of finding and identifying the crew leader after he has departed from his State of residence, and because many crew leaders subject to the act endeavor to evade its registration provisions. This problem is further compounded by the field staff of the Labor Department's Farm Labor Contractor Registration Section being limited to five professional employees.³⁹

Short of increasing the federal enforcement staff, the best solution is to encourage more state enforcement of the federal law. The states' Farm Employment Services are already closely allied with the United States Labor Department through the Florida Pooled Interviews and other information-exchanging plans. The state labor departments are thus accustomed to cooperation in migrant labor matters and should be mobilized for joint enforcement of the federal crew leader laws.⁴⁰

35. Since these tend to be significantly higher than the earnings of a novice, such figures would be deceptive if they alone were shown to inexperienced crews.

36. N.Y. LAB. LAW § 212-a(2)(b) (McKinney 1965). Similar language appears in the federal statute, Farm Labor Contractor Registration Act § 6(c), 7 U.S.C. § 2045(e) (1964).

37. N.Y. LAB. LAW § 212-a(2)(d) (McKinney 1965); Farm Labor Contractor Registration Act § 6(c), 7 U.S.C. § 2045(e) (1964).

38. Camp A, Sheridan, N.Y.; Camp B, Sodus, N.Y. Names of camps referred to in this article are on file with the *Columbia Journal of Law and Social Problems*.

39. SENATE REPORT, *supra* note 2, at 27.

40. Arguably New York should enforce its own migrant law regardless of weak

Finally, even if the federal and State crew leader laws were better enforced and even if they were strengthened along the lines suggested above, the impact of these statutes would still be limited to protecting the migrants against crew leader corruption and travel accidents. Few provisions are intended to guarantee a fair wage to migrants. Nothing in these laws compels the crew leaders to be more responsive to the need of the migrants for better representation before the growers.

E. MIGRANT EARNINGS

1. *Annual Income.* It is difficult to generalize about migrant earnings. The migrant working population is an extremely heterogeneous group. In the course of a harvest season, the migrant population includes not only heads of households for whom migrant labor is the principal means of supporting a family, but also children and grandmothers who may work for only a few days. In addition, migrants are employed with many varieties of work and pay schemes, and work schedules are irregular.

In 1966, there were 351,000 people engaged in migrant farm labor in the United States on at least a casual basis. The average income for this group was \$1,000 from farming and \$500 from non-farm jobs.⁴¹ Since this group includes many workers who are not pressed to make a living from migrant farming, the average earnings of a member is not a useful figure. This average creates only a non-useful exaggeration of the lowness of migrant incomes.

Exclusion of all migrants who annually work less than 25 days on farms leaves a group of 275,000 so-called "non-casual" migrant workers. This population is most frequently used to describe migrant earnings.⁴² In 1966, this group earned an average yearly income from all sources of \$1,800, of which \$1,300 came from farm work.⁴³

This average figure is also misleadingly low. Fifty-five per cent of the non-casual group are not heads of households. These "non-heads of household," such as wives and children, supplement the larger incomes of a head of household. The fact that someone else supports them undoubtedly affects their attitude about how often and how hard they will work. When they do work, non-heads of households earn 23 per cent less per day than the average of all other non-casual workers, and they only work about half as many days in the year.⁴⁴ The significance of non-head-of-household incomes is obscured

federal enforcement. The New York Farm Employment Service, however, avoids unilaterally cracking down on crew leaders for fear of discouraging them from coming to the state.

41. ECONOMIC RESEARCH SERV., U.S. DEP'T OF AGRICULTURE, *THE HIRED FARM WORKING FORCE OF 1966—A STATISTICAL REPORT 16* (1967) [hereinafter cited as *STATISTICAL REPORT*].

42. This group is used, for example, by the Senate Subcommittee on Migratory Labor in its 1967 Report. *SENATE REPORT, supra* note 2, at 2.

43. *STATISTICAL REPORT, supra* note 41, at 19.

44. *Id.* The lower earnings and reduced work schedule, however, are not entirely voluntary. These non-heads of household include many (such as women, children, and

when they are averaged in with higher, head-of-household incomes. A secondary wage earner's importance rests not in what he earns for himself but in what the household to which he contributes earns. Since secondary income in fact operates to raise household income, averaging it in as though each secondary wage earner had a separate household income deceptively lowers the most relevant income figure, the earnings of an average head of a migrant household.

Exclusion of non-heads of households leaves 123,000 heads of households in the non-casual migrant farm worker population. This group includes single men, men with families, single women, and women with families in which they are the primary wage earner. These people generally rely on migrant farming as their major source of livelihood. This group earns an average of \$2,800 per year, of which \$2,000 comes from farming. In a year, members of this group averaged 171 days in farming and 59 days in non-farm employment.⁴⁵

The earnings of household heads produce the most significant statement on migrant yearly incomes: the average migrant household—which may be composed of a single individual or a family of several persons—has a principal breadwinner earning \$2,800. If this average household has other members who do migrant or other work, then its *household income* exceeds \$2,800. The “other household members” who did non-casual migrant farm work in 1966 added an average of \$900 to their households' incomes.⁴⁶

Understanding the significance of viewing household head and non-head of household incomes separately, avoids an error made by the Senate Subcommittee on Migrant Labor. The Subcommittee averaged the two and reported: “Obviously, the migrants' annual earnings were quite far below the \$3,000 income level below which families are commonly considered to be living in poverty.”⁴⁷ Had the Subcommittee focused on the heads of households, it would have seen that the average migrant family probably receives a total income above the \$3,000 mark. Perhaps the average family is subsisting on about \$3,300 a year—\$2,800 from the household head and \$500 from other working members of the family.⁴⁸

Despite their possible earnings of \$3,300 a year, the migrant families in upstate New York seemed to be living in severe poverty. This was reflected in their dissipated talk, inadequate housing, lack of education, and need to rely on a menial and insecure source of employment. This image of poverty

aged) who are physically incapable of working every day or working quickly all day to earn a good piece-rate wage. On days when limited work is available, these are probably the first workers to be unemployed.

45. STATISTICAL REPORT, *supra* note 41, at 19.

46. *Id.*

47. SENATE REPORT, *supra* note 2, at 2.

48. The \$500 estimate is based on (1) secondary wage earners doing non-casual farming add an average of \$900, but (2) many families have no secondary wage earners, or (3) they have secondary earners doing merely casual farm work, and (4) some families have more than one secondary wage earner.

raises at least some doubt as to the accuracy of the \$3,300 figure.⁴⁹ However, even if they do earn \$3,300, they would often be left with practically nothing after taxes and payments to the crew leader.⁵⁰ As a result, whatever their present level of income, higher earnings are necessary to dissipate migrant poverty.

2. *Earnings by the Hour, Day, and Week.* Most migrant work is compensated on a piece-rate basis—"pick more, earn more." Migrants are paid on a straight hourly rate for only ten to 20 per cent of the hours they work. Hourly rates apply to tasks such as trimming brush, weeding, "opening up" tomato vines to prevent rotting, repairing vegetable crates, and even some harvesting when the crop is too sparse to yield good piece-rate earnings. The average hourly rate in New York in 1966 was \$1.32 an hour.⁵¹ Payment for a 40 hour week at this rate would come to just over \$50.

During 80 to 90 per cent of their time, the migrants in New York work on a piece-rate system. This compensation scheme makes it difficult to generalize about hourly or daily wages. During the apple harvest an average worker earns about \$15 for an eight hour day, while an experienced, strong worker can make \$20 to \$25 a day.⁵² Similarly, tomato pickers are said to earn about \$15 during a typical eight hour day at piece rate.⁵³ Generally it appeared that in 1967 growers had adjusted most piece rates so that the average worker was getting about \$13 to \$17 for eight or nine hours of work. This places average hourly earnings in the range of \$1.50 to \$2.00.

Statements about average earnings per day cannot be precise, though they can indicate the general range of what is earned. For example, as discussed earlier, 55 per cent of the migrants doing non-casual labor are secondary wage earners in their households. They tend to have lower-than-average daily earnings largely because they lack the motivation which impels the primary wage earners.

49. In fact their visible poverty raises at least some doubts as to the accuracy of the Bureau of Census data used by the Department of Agriculture, STATISTICAL REPORT, *supra* note 41, although it is hard to locate the source of possible error. For example, was the sample taken representative of the population coming to New York State? Was the information given to the Census Bureau exaggerated by the migrants? In the latter respect, the figure which attributes 230 total days worked to the average migrant household head can be questioned. Two-hundred-thirty days equals 46 five-day weeks per year, a figure which looks too high in light of both first hand observation and discussions with some of New York's migrant laborers. However, whether in fact there is error in the Census data is only speculation.

50. Out of average weekly earnings of \$60, a head of household might typically have major payments to the crew leader for: food for himself and his wife (\$12 apiece), rent (\$3), commissary charges and illegally sold alcohol (\$8), and carryover of charges from weeks in which there was no work and no income (\$5). He would also pay taxes (\$4). This would leave only \$16 a week for the migrant family.

51. P. King, *Recent Trends in Farm Wages*, FARM LABOR DEVELOPMENTS, Aug.-Sept. 1967, at 11.

52. Interview with M. Buchman, Manager of Sodus Fruit Farm, in Sodus, N.Y. Sept. 11, 1967; P. King, *supra* note 51, at 12 (reporting that the 1966 apple rate in New York averaged \$2.03 per hour).

53. Interview with L. McGinn, N.Y. Farm Employment Service Representative, in Dunkirk, N.Y., Aug. 28, 1967.

There are other factors that make it hard to generalize about daily income. For example, it is difficult to make adjustments for the erratic incidence of days on which less than eight hours of work is available. Although earnings average \$13 to \$17 for an eight- or nine-hour day, average daily earnings are about \$10 to \$14 when part-days are considered.⁵⁴

The problems in generalizing about daily income are compounded in trying to determine weekly earnings. Not only do individuals vary from one another and work days differ in number of hours, but the length of the work week is not constant. Frequently there are less than five working days in a week. The length of a work week is often curtailed by rain, by crops that are not ripe, or by pile-ups of produce at the processing plant which receives all the harvested crops. Sometimes, the work week is curtailed because all the available crops are picked by the middle of a week. In an excellent week with six full days of work a good picker can earn as much as \$150 without the benefit of an overtime bonus. Because of the occurrence of the various work-week-curtailling events, however, such excellent weeks are exceptional. When it does rain or when the processing plant is too backlogged to accept more produce, migrant workers are simply out of luck. The growers do not pay for hours when there is no work to do.⁵⁵

Short days and short weeks can be painful blows to a migrant who is trying to earn and save as much money as possible. Yet, even more economically distressing are entire weeks of inactivity that becalm some of the New York migrant crews each summer. Migrants once could arrive in New York on July 4, pick strawberries or cherries for five weeks, beans for the next month, and finish with apples or grapes from September 15 through October 31. This cycle was disrupted in the late fifties, however, by the mechanization of bean harvesting. Now many crews find themselves with three to four weeks during the harvest season in which there is little or no employment. In a situation like this, only the Puerto Rican "contract" workers are protected. Article III of their 1967 contract guaranteed them 160 hours of pay (at the prevailing hourly rate or better) in each four-week period they were in New York.⁵⁶

Most migrants in the State, however, are defenseless against slack periods like the three to four week lull between the cherry and apple harvest.

54. See STATISTICAL REPORT, *supra* note 41, at 19. The national average of all non-casual migrant daily earnings in 1966 is \$10.80. For heads of household, the average is \$11.80. *Id.*

55. A limited exception exists for the 5% of New York's migrants who are Puerto Rican "contract workers." Their standard form Puerto Rican Contract for 1967 guaranteed a minimum earnings equivalent to 160 hours of compensation at the prevailing straight hourly rate in each four week period. This may be somewhat misleading because of the disparity between hourly rate and piece rate. The prevailing hourly rate in New York in 1966 was \$1.32 per hour. Therefore, if a Puerto Rican contract worker worked two six-day weeks in a four week period at moderate piece rate wages of \$18 per day, he would get nothing through the guarantee even if he were given no work during the remaining two weeks. See also N.Y. Times, March 16, 1968, at 17, col. 8 (rate for 1968 Puerto Rican Contract is \$1.45 per hour).

56. See note 55 *supra*.

When their only transportation is the crew bus, they cannot obtain other work unless the crew leader seeks it for them. Even when they have their own cars, inertia seems to prevent them from seeking other work. Also, some grower-employers discourage their crews from looking elsewhere for fear they will not be able to retrieve the crew's labor when it is needed again.⁵⁷ The weeks without work are a heavy burden on the impoverished migrants. It is a burden which should be shared by the grower. He has induced them to come to New York and they are waiting at his disposal.

The New York legislature should put pressure on growers to create additional work for the migrants when they are unemployed for extended periods. If alternative employment is not created to fill the present gaps between crops, then the expense of keeping the migrants on hand ought to become an additional labor cost to growers. The legislature should enact a requirement that growers provide a wage guarantee like the one included in the 1967 Puerto Rican contract. However, the New York law should go further than the Puerto Rican provision, which merely required 160 hours of straight hourly pay in each four week period. The State should set a minimum for earnings equivalent to (a) 160 hours of hourly pay at prevailing rates in each four weeks, and (b) 32 hours of hourly compensation in every week. At current prevailing hourly rates, this would be a guarantee of \$42 a week for every week the migrants are at a New York grower's disposal.

It should be noted that this formula provides dollar-amount minimums, not hours-of-work guarantees. The minimum of 32 hours of hourly pay a week would not be a guarantee of 32 hours of work a week. The significance of this is that if piece rate jobs were available, most migrants would *exceed* the \$42 guarantee *before* working 32 hours. Thus the grower would not be paying out of his pocket every time three days' rain in a week prevented him from offering four days (32 hours) of work.

It is important that there be a weekly guarantee in addition to a monthly guarantee. With only a monthly protection, great hardship could result. It is entirely possible, for example, for the migrants to have two consecutive four-week periods in which all their work is crowded into the beginning of the first period and the end of the second. This work could be enough to satisfy the two monthly guarantees and still leave three weeks without work spanning the end of one period and the start of the next. Long periods without work force the migrants to expend their meagre savings and possibly to go in debt to the crew leader. In addition, such enforced idleness leaves them with empty hours in camps without recreational facilities.

The proposed guarantee system, if efficiently implemented, would not significantly raise labor costs and it would provide impetus to the grower and the State to utilize farm labor more fully. By putting a price on the migrants' idleness, more work would be found for them to do. It is important to keep

57. Interview with R. Wildman, Farm Employment Representative, in Sodus, N.Y., Sept. 8, 1967.

the cost of wage guarantees down because increased labor expense would speed development of mechanized harvesting of cherries, tomatoes, grapes, and apples. Increased automation would reduce the need for migrants.

Because of the following factors, the proposed wage guarantees would not raise grower costs:

(1) There are jobs which an imaginative grower can profitably find for migrants to do when there are no crops ready to be picked. Examples are constructing, repairing, and painting farm and labor-camp facilities, pruning orchard trees, and repairing vegetable and fruit crates. These possibilities were recommended by one of the State's largest fruit growers.⁵⁸

(2) Growers can pool their migrants to borrow labor from one another since different farms need labor at different times. This is partially done with Puerto Rican "contract workers" under the impetus of their present wage guarantee.⁵⁹

(3) The full weekly guarantee would be payable only in weeks when absolutely no work was available.

(4) The grower has more continuous and sophisticated contact with the Farm Employment Service and its local representative than the migrants or their crew leader. The grower's initiative on the migrants' behalf could spur the local Farm Representative to find short-term work for the otherwise idle crew. Instead of waiting for apples and grapes to ripen, they could be picking peaches or cutting celery stalks. The growers could also encourage the Farm Employment Service to be more efficient in finding work and disseminating information about the availability of work in other nearby parts of the State. The local Farm Employment Offices could, for example, be interconnected with teletypewriters as was done in California. The experience there has been that "the speed and range of teletype communication has done much to balance the levels of supply and demand" for migrant farm labor.⁶⁰

(5) More growers can plant intermediate crops, such as peaches, to even out their labor demands.

Thus the proposed wage guarantees would not impose a heavy financial burden on the growers. To be workable, the proposed wage-guarantee law would have to allow the grower to deduct from each worker's guaranteed payment the hourly pay equivalent to any days or hours for which the migrant refused work which was offered. Thus, if it stopped raining in the morning and the farmer made six hours of work available in the afternoon, he could charge six hours pay against the guarantee of any worker who did not report

58. Interview with M. Buchman, *supra* note 52. Farm laborers on the Sodus Fruit Farm have constructed some of the best migrant housing seen in upstate New York.

59. Something of this nature has already worked in Wayne County, where the Wayne County Growers and Processors own three camps that house 400 to 600 Puerto Rican migrants. These workers are rented to growers who need them. Telephone Interview with R. Facer, Health Official, N.Y. State Health Office, in Geneva, N.Y., Feb. 7, 1968.

60. G. Geary, *Teletype Gets the Job Done*, EMPLOYMENT SERV. REV., Jan.-Feb. 1967, at 42.

for work that afternoon. The grower, however, should not be allowed to deduct anything for a worker's refusal to work more than eight hours in a day or more than six days a week.

This special form of wage guarantee is necessary because the more common form of minimum wage protection which only puts a floor under hourly compensation is not well suited to agricultural employment. The problem facing New York migrants is not insufficient hourly wages, but too few hours of work. Consequently, the recent inclusion of migrants under the federal minimum wage law will not substantially affect their incomes in New York.⁶¹ The amended Fair Labor Standards Act (FLSA) now provides a minimum for farm workers of \$1.00 an hour after January 31, 1967, \$1.15 the following year, and \$1.30 starting February 1, 1969. This \$1.30 rate will still be \$0.30 below the minimum provided in the Act for industrial workers in 1969. Since the average hourly migrant rate in New York is already \$1.32⁶² and piece-rate earnings are higher, the FLSA amendment will rarely produce higher income for migrants in the State. In other words, for the hours they worked in 1966, most migrants received more than the federal minimum wage will guarantee in 1969. The migrants' major problem is not so much low wages as it is low hours. This is why a minimum-hours-of-pay guarantee is more important than a guaranteed minimum hourly wage.

Incongruously, New York, which often leads the nation with progressive legislation, still denies migrants and others who "labor on a farm" state minimum-wage protection.⁶³ By contrast, New Jersey, Michigan, and Hawaii already extend such coverage to farm employees.⁶⁴ The 1966 *Manpower Report of the President* announced that "the national objective should be to achieve for farmworkers the kind of protection which has come to be accepted for nonfarm manpower."⁶⁵ This should also be a New York State objective. The minority of migrants whose piece-rate wage is below the present New York minimum hourly wage could be aided by the traditional form of minimum wage protection. Such protection should be extended to them. For truly significant benefits to accrue to migrants, however, New York needs to enact a guarantee of minimum weekly and monthly wages such as that outlined above.

F. THE "FREE LABOR MARKET"

Many State officials and growers contend that the present system of migrant recruitment and wage determination reflects the operation of a "free

61. Fair Labor Standards Act, Amendments of 1966 § 103, 80 Stat. 832, 29 U.S.C.A. § 206 (Cum. Supp. 1966). To produce the inclusion of agricultural workers, § 103 of the Amendments, 80 Stat. 832, 29 U.S.C.A. § 206 (Cum. Supp. 1966), changed the definition of "employee" and § 302 of the Amendments, 80 Stat. 838, 29 U.S.C.A. § 206 (Cum. Supp. 1966), described the minimum that would be applicable.

62. P. King, *supra* note 51.

63. N.Y. LAB. LAW § 651(5)(b) (McKinney 1965). A bill to extend minimum wage protection to farm labor has been introduced in the 1968 session of the N.Y. Legislature. S. Intro. 4279, A. Intro. 5667, N.Y. LEGIS. REC. & INDEX (1968).

64. SENATE REPORT, *supra* note 2, at 10.

65. MANPOWER REPORT OF THE PRESIDENT 145 (1966).

labor market" whose mere existence is sufficient to guarantee fairness to all seasonal labor. To them, the claim that "no one forced them to be migrants" or the belief that "migrants are free to refuse a job if they don't want it" rebuts all arguments that migrants are disadvantaged by the present employment system.⁶⁶

Yet, what these officials and growers overlook is that abuse creeps into the system precisely for the reason that migrants are not hired and paid in a "free labor market." It may be true that many migrants began doing farm work voluntarily and that some may also leave the work at will. Such freedom of choice, however, is only one aspect of the existence of a free labor market. To assure the participants fair treatment in the free market, three other conditions must exist: (1) knowledge by workers of alternative employment opportunities, (2) worker mobility to get to different jobs, and (3) equality of bargaining power between workers and employers.

Knowledge of alternative employment possibilities means that a man going into the migrant labor market would know what different growers offer; *i.e.*, who has the best housing, who is paying the best wages, and who promises the most continuous stretch of work. Without this knowledge, workers are not really free to select the best jobs open to them. Migrants lack adequate knowledge because they normally rely upon word of mouth and crew leaders for job information. Neither of these sources has proven to be a reliable index of employment opportunities. Without reliable knowledge or access to it, migrants lack the freedom to select the best jobs. In this sense their labor market is not functioning as a "free" labor market.

Worker mobility is also necessary. If a worker knows about the best job opportunities but cannot travel to where they are, then his knowledge is useless. Unless he has a car, a migrant's mobility is limited to those places where growers or crew leaders offer to transport him.

Widespread dissemination of knowledge about job opportunities and the ready availability of transportation materially affect employee bargaining power. An employer must deal responsibly with employees who possess the means to travel and who know where to go if they quit. Since migrants lack both knowledge and mobility, their bargaining power is severely diminished. Moreover, some migrants habitually return to the same farms year after year without taking any account of wage considerations. Other migrants rely upon crew leaders to make arrangements with employers. Consequently, almost by default, migrant labor wages are never the subject of negotiations but are instead unilaterally determined by the growers.⁶⁷

66. Remarks like this were heard from more than ten persons interviewed in upstate New York.

67. The wage they receive is set by the growers without the intervention of any representative of the workers. This wage probably responds primarily to what the growers feel is necessary to attract the 13,000 seasonally employed local workers. The locals can, more easily than migrants, decide to stay home and wash clothes (housewives), go camping (youths), or draw welfare and patronize the local bar (indigenous unemployed). Therefore, growers must consider carefully the inducements necessary to attract the

The official argument that migrants enter the market voluntarily is also probably unsound. Many migrants are lured into New York by the false representations of crew leaders regarding pay and working conditions. When a worker accepts a job based on one set of promised facts but the actual facts of work are different, it is false to say that he freely chose to do the work. Further, there is no true free choice when racial discrimination has excluded migrants from other jobs and forced them to accept farm work. Lack of educational opportunities also limits migrants' freedom to follow other lines of endeavor. It should be recalled that a similar supposed freedom of children to refuse factory employment did not blind New York to the need for child labor laws.⁶⁸ Nor did the "freedom" of adults "not to borrow" money at excessive interest close the State's eyes to the need for a usury law.⁶⁹

G. THE POSSIBILITY OF UNIONIZATION

The fact that migrants are not adequately protected by the present employment arrangements means that some new kind of protection is needed. If legislation does not provide migrants with adequate protection, perhaps unionization can. The appeal of unionization is that it would equalize bargaining power and thereby enable the migrants to secure improvements in their employment conditions through negotiation with farmers and pressure on the Legislature. It is unclear, however, what effects unionization would have on the status of migrant farm labor. Unions could use their power to improve wages, and working and living conditions. There would be no need to await legislative enactment of new rules and standards.⁷⁰ Unionization, or even the threat of unionization, however, probably could lead growers to mechanize at an accelerated pace, thus eliminating the need for migrants and leaving them unemployed and even worse off than they are under present conditions.

The AFL-CIO has recently begun limited investigation of the potential for organizing migrant labor in New York. One full-time labor representative was assigned to the upstate region during the summer and fall of 1967. He discovered that: (1) The organization of migrants is made extremely difficult by their transitory presence in the State. (2) Attempts at unionization will be hurt by the migrants' failure to view their individual problems as a group problem. (3) Potential leaders among the migrants are lacking. Significantly, the crew leaders are the last persons who would lead a unionization drive, since a union would threaten their own dominant position. (4) The presence

locals to the fields. After that, vague thoughts that the wages paid one summer may affect the number of migrants who come the next summer may marginally influence the growers' wage determinations. The only control a migrant has over what he earns is that if he does not like the prospects he can try to find another type of employment.

68. N.Y. LAB. LAW §§ 130-40 (McKinney 1965).

69. N.Y. GEN. BUS. LAW §§ 370-82 (McKinney 1957).

70. For this reason, Arthur Hartwick, crusading former Chairman of the New York Joint Legislative Committee on Migrant Labor, sees successful unionization as a complete solution to the ills plaguing migrants. Interview with Arthur Hartwick, in Rochester, N.Y., Sept. 13, 1967.

of hundreds of small growers in New York and the absence of large corporate farms means that organizational efforts would have to be greatly dispersed.⁷¹ By contrast, in California, where there has been some recent successful unionization of migrant labor, there are several huge corporate farms on which unionization efforts could be focused.

Despite these complications, indications are that the AFL-CIO will continue taking slow steps toward organizing New York's migrants.

Certain features in existing federal and State labor laws discourage efforts to unionize farm workers. New legislation is needed to protect the rights of agricultural workers to bargain collectively. At present, both the National Labor Relations Act (NLRA)⁷² and New York's Labor Relations Law,⁷³ which give these rights to almost all other workers, exclude agricultural workers. This discrimination prevents farm workers from availing themselves of the orderly procedures for organization provided for in the NLRA, among them supervised elections for union representation. The present law allows a farm employer to refuse to bargain with a representative elected by a majority of his workers. This legislative discrimination aggravates the practical impediments to organizing New York's migrants that the labor unions have already met.

Growers oppose inclusion of farm workers in the collective bargaining laws, but their opposition is no more valid than the industrial employers' was to the unionization of their employees. The 1966 *Manpower Report of the President* indicated that low income and intermittent employment "create a substantial need" for agricultural workers to be included rather than exempted from state and federal labor legislation.⁷⁴ The current United States Secretary of Labor, Willard Wirtz, has blamed their exclusion in the past for "the consignment of millions of people to poverty while they worked to make the rest of us fat—literally."⁷⁵

Bills have recently been proposed to end the agricultural exemption in both the NLRA and New York's Labor Law, but early passage of either is not likely. This delay perpetuates a form of economic segregation that is in many ways as degrading as racial segregation. However, the recent expansion of the Fair Labor Standards Act (the minimum wage law)⁷⁶ to include farm workers indicates that the trend is toward ending such economic discrimination.

Though exclusion from collective bargaining legislation should definitely be abolished, the advisability of resorting to unionization is less certain. Excessively high labor costs which could result from aggressive unions would

71. Interview with Leland Stanford, Field Representative, AFL-CIO, in Fredonia, N.Y., Aug. 23, 1967.

72. 29 U.S.C. § 152(3) (1964).

73. N.Y. LAB. LAW art. 20, §§ 701(3), 703 (McKinney 1965).

74. MANPOWER REPORT OF THE PRESIDENT, *supra* note 65.

75. *Hearings on H.R. 4769 Before Special Subcomm. on Labor of the House Comm. on Education & Labor*, 90th Cong., 1st Sess., 19 (1967) (extension of NLRA to agricultural employees).

76. *See* note 61 *supra*.

easily lead to accelerated mechanization in New York. Already, nearly total mechanization has been accomplished in the picking of peas, beans, and potatoes. Further, mechanical harvesting is now in advanced stages of experimentation for cherries, grapes, and apples.

A wise union, aware that its coming could leave many migrants unemployed, might focus its reform efforts to avoid creating migrant unemployment. By seeking improvements in crew-leader relations, working conditions, and sanitary facilities, for instance, a union of migrants could raise living standards without affecting growers' costs adversely.

Of course, if growers or legislators fear unionization, they can act on their own initiative to improve migrant earnings and housing conditions, thereby reducing both the need for, and the appeal of, unions.

III. LIVING CONDITIONS

A. QUALITY OF EXISTING CONDITIONS

1. *Differing Views.* When they arrive in New York, most migrants know the farm they will be working on and go there directly. On the farms, the migrants reside in housing provided by the grower who employs them. These accommodations may be rent-free or rented at a charge of up to three dollars a week for each room.

There is some disagreement about the quality of migrant living conditions. Numerous studies have taken the position that living conditions on the camps are totally unacceptable.⁷⁷ This view is shared by many antipoverty workers and educators currently working with the migrants in New York.⁷⁸ On the other hand, most State officials who deal with migrants deny that conditions on the camps are cause for concern. They argue that newspaper accounts have consistently distorted the situation by inventing stories about large families packed into small dirty rooms, shivering because no heat is available. "If the horrible conditions that one reads about really do exist," the head of New York's Farm Employment Service says, "they do not exist in New York, but only down South."⁷⁹ Several officials interviewed suggested that playing up the migrant labor situation is a way for urban politicians to "take the heat off" their own problems.

State officials may have an interest in denying that there are unsatisfac-

77. T. MOORE, *THE SLAVES WE RENT*, *supra* note 20, at 37-41 (1965); L. SHOTWELL, *supra* note 20, at 93-94, 103; REPORT OF THE N.Y. STATE DIVISION OF HOUSING & URBAN RENEWAL, ch. 4 (allegedly "suppressed" report released by Radio Station WMCA, Nov. 13, 1967); D. WRIGHT, *THE FORGOTTEN PEOPLE* (N.Y. World Telegram articles, reprinted by Consumers' League of N.J., 1961). The Moore, Shotwell, and Wright Studies describe migrant conditions in various sections of the country.

78. Interviews with R. Spohn, antipoverty worker, in Sodus, N.Y., Sept. 8, 1967; P. Hogan, N.Y. Dep't of Educ., in Rochester, N.Y., Sept. 13, 1967; Arland White, Ass't Supervisor of Curriculum, Sodus School System, in Sodus, N.Y., Sept. 11, 1967.

79. Interview with Richard K. Klatt, N.Y. State Sup't of Farm Employment, in Rochester, N.Y., Aug. 22, 1967.

tory conditions at the camps. The critics of these conditions may be said to have an interest in exaggerating them. Additional factors, however, encourage this divergence of positions. First, there has been improvement in conditions in some camps over the last five years. In many instances critics of migrant conditions are either unaware of these improvements or unwilling to acknowledge them, with the result that they continue to criticize some conditions that have already been ameliorated. Second, there is a wide range of accommodations available to migrants. Officials tend to stress that the better facilities are typical, while the critics claim both that the less desirable camps represent the average and that even the best camps are unsatisfactory.

Visits to over 30 camps selected at random prompt the conclusion that, in spite of recent improvements and the existence of some decent housing, many camps are not fit to be occupied.

2. *Actual Conditions in the Camps.* In some of the camps visited, severe overcrowding was discovered. At one camp, a family of six lived in one ten foot by 14 foot room.⁸⁰ Few buildings had heating facilities, even though on several September nights the temperature was near freezing.⁸¹ In one camp in Sodus, New York, the ceilings were only inches above the heads of the adult tenants.⁸²

Nearly all the camps had only primitive toilet facilities. Usually these were outdoor privies, often foul-smelling and filthy. Moreover, the number of privies was often too small for the number of people at the camp. At one camp, accommodating 70 to 80 men and women, there were two five foot by four foot out-houses (one for each sex), each with a wooden board with two holes in it serving as a seat.⁸³

All migrant camps have showers of one form or another. Usually, however, they are too few, supply hot water irregularly, and sometimes are located a considerable distance from the sleeping quarters. At one camp there had been no hot water for three weeks,⁸⁴ and at another, there was no hot water on the day the camp was visited.⁸⁵

To a considerable extent, the migrants are isolated from the neighboring community. In many instances, because of lack of transportation, they do not leave the camp for weeks at a time except to work. Even when they are able to get into a nearby town they are frequently made to feel unwelcome. This further encourages their tendency to remain on the camps. During periods of unemployment, the migrants have nothing to do and no place to go. An additional cause of isolation is that most camps do not provide any pay telephones and even the crew leader living in the camp frequently has no phone.

80. Camp C, in Brant, N.Y.

81. In Wayne County, the county with the greatest concentration of migrants in New York, there were nine days in Sept. 1967, in which the temperature was 45°F or below. Telephone Interview with U.S. Weather Bureau statistician, in New York City, Feb. 5, 1968 (temperature readings from the cooperative weather observer, Sodus, N.Y.).

82. Camp D, Sodus, N.Y.

83. Camp B, Sodus, N.Y.

84. *Id.*

85. Camp D, Sodus, N.Y.

Despite the many hours they must spend at their camps, the migrants are provided with virtually no facilities for recreation. At one camp there was only a basketball hoop hung in a state of disrepair from a pole.⁸⁶ Many large camps had a juke box as their sole recreational facility. Often there were only the television sets some migrants had brought with them.

B. HOUSING REGULATIONS

There are three principal reasons why migrant living conditions are so poor: (1) inadequate sanitary and housing regulations; (2) lax enforcement of existing regulations, and (3) failure of the growers to correct poor conditions.

1. *Failings of the Existing State Regulations.* Pursuant to authority granted by Section 225 of the New York Public Health Law, the Public Health Council may write and amend regulations setting forth minimum requirements for labor-camp housing and sanitation facilities.⁸⁷ These regulations, which are subject to the approval of the New York State Commissioner of Health,⁸⁸ are set forth as Part 15 of the State Sanitary Code.⁸⁹ The regulations are both too weak and too vague to compel decent accommodations. A high-ranking official of the Health Department, who was far from sympathetic with the migrants' situation, conceded, "Our rules are minimal as most sanitary codes are."

The New York Code has several provisions which deal with the living space that must be provided for migrants. These sections establish minimum-footage requirements for sleeping quarters⁹⁰ and create certain standards for cooking and dining areas.⁹¹ The Code does not differentiate between families and single persons in its requirements. An examination of these Code sections and the effect of their failure to provide separate requirements for families reveals the inadequacies of the Code in this area.

The amount of living space that the Code requires for each person over two years old is 30 square feet for labor camps licensed prior to January 1, 1959, and 40 square feet for facilities built or converted to migrant housing after that date. The requirements when double-deck beds are used are 20 square feet per person for buildings under permit prior to 1959, and 30 square feet otherwise. A few comments give perspective to these figures. The 30 or 40 foot allotment is often the migrant's entire home. It may comprise all the space he has unless he also uses other communal buildings. Yet, his bed alone takes up at least 15 square feet of this living area so that no more than 15 to 25 square feet might remain as his free floor space. Usually there is no sepa-

86. Camp E, Sodus, N.Y.

87. N.Y. PUB. HEALTH LAW §§ 225(3), (4)(m) (McKinney 1954). The Council consists of the commissioner and eight members appointed by the Governor, of whom at least four must be physicians, N.Y. PUB. HEALTH LAW § 220 (McKinney 1954).

88. *Id.* § 225(3).

89. 10A N.Y. Code, Rules & Regs. pt. 15 (1962) [hereinafter cited as NYCRR].

90. *Id.* § 15(6)(c).

91. *Id.* § 15(10).

rate living room; the bathroom is many yards away; the kitchen is either a communal kitchen (often in another building) or a stove in the same bedroom. It is not uncommon to observe migrant facilities in New York State with floor areas barely above the minimums. It is apparent that in these cases the footage minimums are far too small to house people in reasonable comfort.

Because no distinctions are made between facilities required for family units and for single people, members of one family sometimes are found separated among unconnected rooms. Even where such a family does have connected rooms, the amount of privacy afforded them is small. The rooms open onto a common hall shared by as many as 50 people. The other rooms opening onto the hallway often contain young, single people. These young people, in part because of the lack of other available recreation, sometimes drink heavily and are often boisterous. Where little children constitute part of the family, the noise and confusion inherent in such a situation are particularly undesirable.

Another living-space problem is that migrants are permitted to use their single small rooms for cooking although adequate space and ventilation for cooking, washing and storage facilities in these rooms do not exist. The Code provides that "[w]here food storage, preparation or service is necessarily carried out in single room quarters occupied by a family, space for such purposes shall be provided in addition to the space required for sleeping purposes"⁹² The Code also does not require any facilities for washing hands, food, or dishes in rooms where food is prepared or served. Nor are there any provisions for refrigeration space. Consequently, many migrants cook over small burners in their bedrooms without any running water or refrigeration in the room.

The inadequate provisions dealing with living space must be changed. Unless the regulations are improved, even the most dedicated officials will be partially immobilized. Unless these improvements are made quickly, they will be too late. The number of migrants in New York State is growing smaller by four per cent each year.⁹³

2. *Federal Housing Regulations.*

a. *Living space.* In 1956 the President's Committee on Migrant Labor⁹⁴ drew up a set of recommended housing standards.⁹⁵ The standards were not made mandatory on the states but were to serve as a guide for use in drafting state legislation.⁹⁶ This voluntary arrangement produced little state action. Therefore, on July 1, 1967, the U.S. Department of Labor took executive

92. *Id.* § 15(10)(c).

93. See note 6 *supra* and accompanying text.

94. The Committee, appointed on Aug. 26, 1954, consisted of the Secretaries of Labor, Agriculture, Interior, Health, Education and Welfare, and the Administrator of the Housing and Home Finance Agency. L. SHOTWELL, *supra* note 20, at 108-09.

95. U.S. DEP'T OF LABOR, HOUSING REGS. FOR OUT-OF-STATE AGRICULTURAL, WOODS, & RELATED INDUSTRY WORKERS RECRUITED THROUGH STATE EMPLOYMENT SERVICE (1967) [hereinafter cited as U.S. DEP'T OF LABOR, HOUSING REGS.].

96. *Id.* at 1.

action to make the standards of the President's Committee mandatory in all states.⁹⁷ The only sanction against non-complying farmers, however, is that the federally affiliated State Farm Employment Services are not to assist them in the interstate recruitment of agricultural workers.⁹⁸

These sanctions will not be effective for two reasons. First, the farmers do not really need the Employment Service. Many do not use it in the recruitment process and for those that do, the Service's refusal to assist them in finding labor would be inconvenient but not disastrous. Second, the federal standards will be policed primarily by the same inefficient State machinery that enforces New York's regulations.⁹⁹ However, since enforcement in New York can be improved, New York should adopt at least the federal standards and then apply meaningful sanctions of its own.

By the standards of the Committee's Code, the footage requirements found in the New York Code are well below an acceptable minimum. The Federal Code requires that

in all shelters hereafter constructed or remodeled each room designed or used for sleeping purposes shall have at least 400 cubic feet of air space per person. *It shall contain at least 70 square feet of floor space for the first occupant and at least 50 square feet of floor space for each additional occupant.*¹⁰⁰ [Emphasis supplied.]

That this is well above New York's minimums indicates how inadequate the President's Committee thought New York's standards are. The Committee's minimum-footage requirements, however, suffer from a serious drawback. No timetable is provided for the elimination of existing housing which fails to meet the requirements. Because the demand for migrant labor is diminishing in New York, the likelihood of substantial new construction is small and the requirements set up by the Committee will be almost entirely ineffective.

In order to achieve the footage standards established by the Committee, New York should provide a definite schedule for the elimination of non-complying buildings.¹⁰¹ Any structure built or converted to use as migrant housing before the 1963 season has already provided the farmer with five years of use and tax-deductible depreciation. The new standards should be applied immediately to those structures. For buildings built or converted after

97. 20 C.F.R. § 602.9(d) (1967).

98. *Id.*

99. The Employment Service is not to assist in recruitment until it has "ascertained" that conditions comply with the federal standards, 20 C.F.R. § 602.9(d) (1967). The Service will make its decision primarily on the basis of information supplied to it by state officials. For a discussion of enforcement in New York and suggestions for improvement, see notes 129-41 *infra* and accompanying text.

100. President's Comm. on Migratory Labor, Agricultural Worker Site & Physical Facilities Standards § 4(d) [hereinafter cited as Committee's Code, Site and Physical Facilities], *reprinted in part in* U.S. DEP'T OF LABOR, HOUSING REGS., *supra* note 95.

101. New Jersey has recently enacted legislation which requires that "[e]very sleeping place . . . shall be made to conform, no later than January 1, 1970, to the standards prescribed by the Secretary of Labor of the United States. . . ." Ch. 259, § 4, N.J. Sess. Laws [1967] 847 (Soney & Sage Serv.).

1963, five years' grace from the date of construction or conversion should be allowed before making the standards applicable. Thus, buildings used for the first time in 1964 would have until the 1969 season before the new standards became mandatory.

b. *Other features of the federal regulations.* In addition to enlarging the required living space, the new federal standards show an understanding of the fact that different requirements must be made for single people and for families. "In all shelters hereafter constructed or remodeled not less than two rooms shall be provided for each family composed of husband and wife and one or more children 10 years of age or over."¹⁰² Again, however, the failure to provide a timetable makes the section practically useless. All a farmer must do to avoid the requirement is keep the migrants in existing accommodations. The section also fails to specify that the two rooms must be connected by a private door or hallway. Under the wording of the provision, a farmer could provide two unconnected rooms for a family and satisfy the requirement. The omission should be corrected in New York because of the importance of strengthening and protecting the family. The widely discussed *Moynihán Report* indicates that a weak family structure is probably a large factor in perpetuating the cycle of poverty among Negroes.¹⁰³

The President's Committee has established requirements in the area of cooking facilities. The Code states that "in camps where workers are permitted or required to cook in their individual quarters, a separate room shall be provided and equipped for use as a kitchen."¹⁰⁴ The Committee's provision does not go far enough and is too vague. "Equipped for use as a kitchen" should be defined to include hot and cold running water, a minimum number of cubic feet of refrigeration space per person, and at least two burners. It should also be made clear that the space provided for a kitchen shall not be included in the minimum-footage requirements for sleeping quarters. The present New York regulations require additional footage when cooking is done in a room,¹⁰⁵ but they do not demand a separate room. Because New York's requirement is easily abused—burners are often found in rooms without the required additional footage—the requirement of an additional room if there is to be cooking is advisable.

3. *Need for Improved State Regulation.* Whatever emotional reasons a farmer might have for not improving the facilities he provides for his workers, in the final analysis he will usually rely on an economic argument. Farmers argue that since New York is competing with other states for markets in fruits and vegetables, they and the State will be placed in a disadvantageous competitive position if they are required to provide more expensive facilities than neighboring states. This argument cannot be taken lightly. It may be unrealistic to demand improvements if the money for them is not available, or if such demands will destroy New York's competitive position.

102. Committee's Code, Site, and Physical Facilities, § 4(c), *supra* note 100.

103. See generally D. MOYNIHAN, *THE NEGRO FAMILY* (1965).

104. Committee's Code, Site, and Physical Facilities § 11(a), *supra* note 100.

105. 10A NYCRR § 15.10(c) (1962).

From the point of view of New York farmers, therefore, federal migrant housing legislation would be more desirable than an upgrading of the New York Sanitary Code. Farmers would then not have to worry about having higher costs than their out-of-state competitors, and the East Coast migrants would enjoy improved facilities along their entire 1,000 mile journey. The recommendations of the President's Committee, however, did not become mandatory in all states until July 1, 1967. Having acted so recently, it is unlikely that the federal government will make substantial changes in its housing requirements in the near future. New York, therefore, cannot wait for Washington to impose uniform requirements across the country. But stiffening the Sanitation Code will not impair the ability of New York growers to compete with sister states. Improvements need not be expensive; what they do cost can be balanced by the greater productivity on the part of the workers that results from improved living conditions.¹⁰⁶ The new minimum footage requirements would not necessitate much new construction. Few rooms are so small that they could not accommodate a single person under the recommended standard. To comply with the new standards farmers would only have to construct enough housing to accommodate the overflow, and the existing units could continue to be used. Rooms which are so small that even a single person cannot live comfortably in them would have to be eliminated. Even here, however, the farmer may not have to incur great expense. Where rooms are so small that the minimum requirements cannot be satisfied for even a single occupant, it may frequently be possible to break down a wall between two small rooms to provide adequate living space. Similarly, the requirement of providing unified quarters for families could be met by modifying existing structures. For example, a farmer could install a doorway between two rooms separated by a wall.

4. *Other Methods of Improvement.* Ingenuity on the part of individual farmers and cooperation among them can also reduce the cost of improvements. Some farmers have started housing migrants in trailers. Such accommodations, if acquired used, are not very expensive¹⁰⁷ and would frequently be a substantial improvement on what is now provided for migrants. For families, trailers are a particularly desirable alternative because of the privacy they provide.

One large fruit farm in Sodus, New York, which has provided several migrant families with trailers has also found another way to provide better housing. The management purchased a house in a nearby town and trans-

106. Address by Marcus E. Buckman, 32d Ann. Meeting of the Nat'l Apple Inst., June 11-13, 1967; see U.S. DEPT OF LABOR, HOUSING HANDBOOK, A GUIDE TO IMPROVED FARM WORKER HOUSING 1 (1967) ("Housing contributes to the health and well being of workers, thereby affecting their productivity.").

107. Five-year-old trailers can be purchased for \$2500 to \$3000. Ten-year-old trailers can be purchased for \$1200 to \$1800. These trailers are 8 to 10 feet wide and 40 to 50 feet long. They have two or three bedrooms, a kitchen, a heating system, a bathtub and shower, and a flush toilet (which must be connected to an external sewage system). Telephone Interview with Wendell Swabbling, Owner, Chili Mobile Home Sales, Churchville, N.Y., Feb. 8, 1968. Mr. Swabbling noted that he had sold used trailers to farmers for migrant housing "many times."

ported it in sections to the farm.¹⁰⁸ Another possibility, though generally resisted by the farmers, is cooperative housing. With the economies of scale of extensive construction, large cooperatives could reduce the cost to each farmer. There are numerous examples of successful cooperative ventures in housing for agricultural workers.¹⁰⁹ A description of one in Western Texas and the conditions that led to its construction is found below:

Realizing that the shameful housing conditions in the old labor camps have contributed to the worker shortage, these men [local businessmen who "are acutely aware of the tremendous spending power of the thousands of workers needed in these fields"] have made giant strides to correct this situation. Local bankers, businessmen, and farmers have built a small city for both migratory and year round workers . . . curved paved streets, sidewalks and lawns form a complex around a shopping center. A washateria, barber shop, restaurant, grocery store and other types of businesses are housed in this attractively bricked shopping area. . . .¹¹⁰

Most farmers have not yet realized that good housing and sanitary facilities are sound economics. The manager of a 1,000-acre fruit farm on the shore of Lake Ontario has noted that "good housing will not necessarily make [a good] crew but will certainly help to attract and to keep the better workers coming back year after year."¹¹¹ Farmers who are willing to provide decent places to live will get the same crews back each summer with very little turnover. If the facilities are unattractive, there usually is high turnover among the crew. This high turnover brings in workers who are less experienced and reliable.

C. SANITARY REGULATIONS

1. *Toilet Facilities.* Flush toilets are not made mandatory by the New York Code. Consequently, the number of such toilets provided for migrants is quite small. There are approximately 200 labor camps in Wayne, Ontario and Yates Counties. Only 30 to 35 of these have flush toilets.¹¹² The regulations also demand only one privy seat for each 20 persons and make no provision for partitions between the seats.¹¹³ This failure to require more and better toilets has allowed growers to meet the standards of the Code by providing a few filthy out-houses for a large crew of migrants.

In addition to the unacceptable section dealing with toilets at the camp in the Sanitation Code, New York's Labor Law has no provisions for toilet

108. Sodus Fruit Farms, Sodus, New York.

109. The Wayne County Growers and Processors, for example, own three camps that house 400 to 600 Puerto Rican migrants. These workers are rented to farmers who need them. Telephone Interview with R. Facer, *supra* note 59.

110. M. Mitchell, *Better Housing Attracts Farmworkers in West Texas*, 4 EMPLOYMENT SERV. REV., Jan.-Feb. 1967, at 33.

111. Address by Marcus Buckman, *supra* note 106.

112. Anonymous Interview with State Health Inspector, Geneva, N.Y., Sept. 14, 1967.

113. 10A NYCRR § 15.8(c) (1962).

facilities in the fields and orchards although it requires toilet facilities at virtually every other kind of indoor and outdoor work.¹¹⁴ Thus the migrant who usually leaves for the fields early in the morning and does not return until the evening, must often relieve himself in the fields.

The President's Committee did not recommend any substantial change from the existing New York Code requirements for toilets at the camps, nor did it deal with facilities in the fields.¹¹⁵ New York should correct this. The privies currently provided at many camps are indefensible for humanitarian and health reasons. A study made by the New York State Division of Housing in 1961 reports that

most, if not all, housing codes prohibit further use of privies in urban areas While out-houses serving and maintained by individual families may not threaten the public health, it was felt that such toilets that are used by many unrelated persons could, through neglect and improper use, pose a health problem.¹¹⁶

The study points out some significant research done in Kentucky which showed that people using privies had two to three times the incidence of disease and infection as people using flush toilets.¹¹⁷

Most growers and officials insist that migrants do not know how to use flush toilets, do not want them, and destroy them whenever they are provided. This argument is not supported by the observed facts. One veteran health inspector in Wayne County commented, "A lot of people tell you that flush toilets are no good because the migrants don't know how to use them. . . . We have about 30 camps that have flush toilets and we have very little trouble with them."

It does not seem necessary to provide flush toilets in every sleeping unit, but New York should demand that all camps have one flush toilet for each ten occupants of the camp, and that no sleeping rooms be more than 75 feet from a toilet. These improvements in the New York Code are needed to give the migrants more sanitary, more comfortable, and more accessible toilet facilities.

Provisions for toilets and water for drinking and washing in the fields must be written in the Labor Law. Humane considerations are sufficient in themselves to justify such requirements. However, there are other persuasive considerations. United States Senator Harrison Williams describes the situation that has resulted from a failure to provide sanitary facilities in the fields:

We as consumers have good reason to be uneasy about this situation. Much of our soft food and other products are picked, and often field-packed, by migratory farm workers. If we object to filth anywhere

114. See N.Y. LAB. LAW §§ 203, 295, 381, 404 (McKinney 1965).

115. Committee's Code, Site and Physical Facilities § 9, *supra* note 100.

116. REPORT OF N.Y. STATE DIV. OF HOUSING & URBAN RENEWAL, *supra* note 77, at IV-8.

117. REPORT OF THE CUMBERLAND FIELD STATION OF THE COMMUNICABLE DISEASE CENTER OF THE PUB. HEALTH SERV., PRESTONBURG, KY., *quoted in* REPORT OF THE N.Y. DIV. OF HOUSING & URBAN RENEWAL, *supra* note 77 at IV-9.

we certainly should object to it in any part of the process that brings the food from the fields to our tables. Quite often the next hand to touch the celery after that operation in the fields will be ours when we buy it in the store to take it home.¹¹⁸

Portable toilets are not expensive and the desirability of providing for the migrants, who pick the food we eat, a place to wash their hands after they use the toilets, justifies a requirement of running water in the fields. The availability of water from irrigation systems will sometimes reduce the cost of bringing water to the migrants.

2. *Other Improvements in the Sanitary Code.* Several other areas in the Sanitary Code should be improved. The Code requires that sleeping quarters occupied after October 1 must have heating facilities capable of maintaining a minimum of 68 degrees Fahrenheit.¹¹⁹ Anyone familiar with the weather in upper New York State knows that cold temperatures are encountered well before October.¹²⁰ The lack of heat can make a September evening extremely uncomfortable and dangerous to health. The Code does provide that "satisfactory heating facilities *may* be required . . . at camps which are occupied at times other than noted above [*i.e.*, after October 1] when the room temperature falls below 68° Fahrenheit." [Emphasis supplied.]¹²¹ Observations, however, did not disclose many instances of this prerogative being exercised. New York should make the simple change of advancing the date after which heating is required from October 1 to September 1.

Finally, there should be changes in the requirements for electricity, the availability of drinking water, and the height of ceilings. In addition, pay phones should be required in all camps.¹²² The Code currently has no requirement that camps be provided with electricity. It only states that, "If electric current is available . . . at least one electric light outlet shall be provided in each sleeping quarters, kitchen, dining room, mess hall and toilet room."¹²³ Even these requirements are not always satisfied. At several camps, electricity was available in all rooms but not in the privies. Electric lighting should be required in all camps, in sleeping quarters, kitchens, shower rooms and toilet rooms. In all but shower rooms and toilet rooms there should also be provisions for electric outlets.

There is no requirement for running water in any of the sleeping quarters. A migrant wanting a drink of water may have to journey to a different building, or a faucet located out of doors. The Code only provides that, "Drinking water . . . shall be readily available to occupants of the property."¹²⁴ Here is an example of where vague wording has permitted abuse. There is no

118. T. MOORE, *supra* note 20, at 46.

119. 10A NYCRR § 15.6(j) (1962).

120. See note 81 *supra* and accompanying text.

121. 10A NYCRR § 15.6(j) (1962).

122. A bill that would amend N.Y. LAB. LAW § 212(c) to require every grower to install a public pay telephone for migrants in every farm labor camp was introduced in the New York Legislature in 1967. A. Intro. 4863, N.Y. LEGIS. REC. & INDEX (1968).

123. 10A NYCRR § 15.6(d) (1962).

124. *Id.* § 15.7(a).

definition of "readily available" and as interpreted by health officials it frequently means only a few faucets about the camp grounds in addition to those in the kitchen. New York should require that drinking water be available at a distance of no more than 30 feet from any sleeping quarters. Any room where cooking is permitted should, as noted earlier, have hot and cold water provided.

The Code now provides that ceilings in sleeping quarters must be at least six feet six inches high for 80 per cent of the floor space, permitting the rest to be five feet.¹²⁵ Thus, a lawful ceiling can be less than a foot above the average man's head and only a few inches above the heads of many. In one camp in Sodus, New York, where the ceilings were near the minimum level, the resulting discomfort was apparent.¹²⁶ New York should increase the minimum ceiling height by one foot to seven feet six inches.

The lack of recreational facilities at the camps erodes morale and probably contributes to whatever destructiveness exists. Because the crews vary so much in size (from five members to over 100) and composition (from large families to crews composed entirely of single men), it is difficult to write into the law specific requirements for recreational facilities.

A minimal requirement should be that camps of 20 persons or more have a common room with at least 200 square feet of floor space. The real impetus in this area, however, must come from the farmers. They must realize that in addition to helping the migrants they will be helping themselves if they erect a basketball hoop or provide the migrants with bats and balls.

3. *Arguments Against Requiring Improvements.* Even if the farmers could be persuaded that it is economically feasible to provide better facilities, they are still likely to resist. Many of them believe that "you can give the migrants a brand new camp and within two weeks it'll be a wreck. The migrants don't know how to treat decent facilities. They destroy everything you give to them." It is true that some migrants treat their accommodations roughly; sometimes because they are frustrated, sometimes because they get drunk, and sometimes because they don't know any better. But reports of destructiveness are greatly exaggerated. Nowhere was it observed to have approached the point where it arguably could justify a refusal to improve the facilities. There are also indications that as facilities improve, and the conditions in which migrants are forced to live are no longer frequently filthy and degrading, the degree of frustration and destructiveness decreases.¹²⁷

Anyone suggesting stricter housing and sanitation standards must confront the argument that his efforts to ameliorate the situation will bring about a situation which is decidedly worse. Any substantial increase in the expenses of maintaining migrants, it is claimed, causes the farmers to seek faster ways to mechanize their harvesting operations and puts migrants out of work. "The push given to mechanization in California by the threat of union activity has

125. *Id.* § 15.6(c).

126. Camp D, Sodus, N.Y.

127. Address by Marcus Buckman, *supra* note 106.

its counterpart in the east with every step-up in state housing inspection and tightened regulations.”¹²⁸ Mechanization will, in time, eliminate the need for most of the migrants. Stiffening the Sanitation Code may speed the process and put many migrants out of work. This argument, however, should not deter New York from improving its standards. Many of the improvements, as noted earlier, need not be expensive. But more important, no sector of the economy should be permitted to house its workers under intolerable conditions merely because improving those conditions would stimulate mechanization. If agriculture cannot provide decent housing for migrants, then efforts should be made to train migrants for work in other areas of the economy. The threat of automation has not prevented the establishment of strict requirements for working conditions in industrial jobs and should not prevent similarly rigorous requirements in agriculture.

D. ENFORCEMENT PRACTICES

While it is clear that the Sanitation Code must be strengthened, it is equally clear that poor enforcement of the existing regulations is also responsible for the living conditions of the migrants. A Negro newspaperman who spent several months living and working with the migrants, found that in the North, “unlike the South, there were, indeed, a few laws aimed at protecting the rights of the itinerant harvester. But the truth is that these laws are so scant and so haphazardly enforced that they have little effect.”¹²⁹ While this may overstate the case, the provisions of the Sanitary Code in New York are not adequately enforced.

1. *Official Attitudes.* Primary responsibility for enforcing the Code is assigned to the district offices of the New York State Health Department and certain county Health Departments.¹³⁰ Members of the Department make regular inspections both prior to the migrants’ arrival and during their residence at the camps. Estimates of the frequency of inspection vary. One health official stated that each camp would be visited five or six times a season. Other officials, however, claimed more frequent visits. The inspectors do not visit all the migrant labor camps in New York. The Code is only applicable to camps housing five or more migrants.¹³¹ Smaller camps are not regulated. Frequently, the local health officials are friends of the growers and have lived in the area for many years. Under these circumstances most of these officials are unwilling to crack down on violations. A casual attitude toward the requirements set forth in the Sanitation Code is not limited to local officials.

128. L. SHOTWELL, *supra* note 20, at 191.

129. D. WRIGHT, *supra* note 77, at 9.

130. In some areas New York State has dissolved its district health offices and replaced them with county-controlled offices. The district office in Jamestown, for example, was replaced by a county health office in 1965. Interview with K. Brown, County Health Official, in Mayville, N.Y., Aug. 29, 1967.

131. N.Y. PUB. HEALTH LAW § 225(m) (McKinney Supp. 1967). A bill introduced in the N.Y. Legislature in 1968 would make the Sanitation Code applicable to migrant labor camps “which are occupied by one or more persons.” S. Intro. 4277, A. Intro. 5446, N.Y. LEGIS. REC. & INDEX (1968).

High officials in the State Health Department and other departments dealing with migrants defend some of the worst camps in the State. Real reform will be extremely difficult unless some of these officials are replaced.

Another aspect of the unsympathetic attitudes of many officials and growers is a tendency on the part of even the most well-meaning to deceive themselves about conditions on the camps. Most of them simply do not believe that the migrants are dissatisfied with their environment, or that the conditions are unsatisfactory. "They wouldn't come back if they didn't like it," is the response that is frequently made to attempts to point out some of the deplorable conditions. "After all, it's just a summer camp," some argued, "and when you go camping in the woods you don't expect to find indoor toilets or running water in your house."

The migrants, however, are not satisfied with their conditions. When a migrant tells an official that things are "not too bad" it is unlikely that he is conveying what he really thinks.

The migrant . . . is likely to be suspicious of any but the most superficial contacts with professional personnel. Reliable answers to questions are therefore unlikely, especially if the migrant is Negro, since it has often been observed that the low-income poorly educated southern Negro is likely to respond to questions with the answers he thinks the questioner desires.¹³²

Even if one assumes that the kind of distortion suggested above is not inherent in a situation where State officials question the migrants, there is a much simpler reason why migrants will not complain. They are worried about the security of their job and are not willing to risk offending the farmer or the crew boss by complaining about the conditions. If they are fired they may not be able to find other work and possibly would be unable to afford transportation home. Although the comment of one health official that, "I've talked to the migrants every year and they are happy," was not atypical, many of the migrants when approached informally by researchers voiced harsh criticism of their living conditions.

As for the argument that the migrants are merely "camping out," what its proponents fail to recognize is that the migrants are not young men and women who choose to go to the country to "rough it" for two months. These are people of all ages who may be forced to live this way all year.

2. *Enforcement Procedures.* Even where officials are willing to try to correct a reported violation of the Sanitation Code there is no assurance that the violation will be eliminated. Although available sanctions against violators range from small fines¹³³ to imprisonment¹³⁴ the cumbersome enforcement procedures that are utilized by health officials make results extremely difficult to obtain. The procedure followed in the Geneva, New York, Health Office

132. E. Koos, *THEY FOLLOW THE SUN*, *supra* note 4, at 7-8.

133. N.Y. PUB. HEALTH LAW § 1331(5) (McKinney 1954); 10A NYCRR § 1.2 (1962).

134. 10A NYCRR § 1.21 (1962).

illustrates this point. First, the farmer is informally notified of the violation. Then, acting pursuant to Section 1331 of the Public Health Law, notice of the violation is posted on the farmer's camp.¹³⁵ The camp will then be reinspected within a week to see if the violation has been corrected. If it has not, the Health Department will call the farmer in for a conference to try to solve the problem. It may be some time before the conference can be held, and it usually will be another week before the farm is reinspected to see if the conference was effective. If the violation was not spotted until just before the migrants arrived, a farmer with a little ingenuity can stall long enough so the migrants will spend the major portion of the summer living under conditions not meeting the standards of the Sanitation Code.

If a farmer refuses entirely to correct violations, further legal proceedings may be used to force compliance. Section 1331(5) of the Public Health Law provides that a grower who fails to comply with the Sanitation Code "shall pay a penalty of twenty-five dollars for each day thereafter during which such violation continues"¹³⁶ There are two problems with this sanction, however. First, it is rarely applied. According to one State Health official, it is employed only in the last resort against the most stubborn farmers. Second, if major repairs would be needed to cure the violation, the farmer may simply prefer to pay the fine. If it is not the beginning of his season and he can postpone its imposition for a few weeks, the fine may cost less than the repair.

A second sanction available to the Health Department is much more severe—closing down of the camp.¹³⁷ The imposition of this sanction is extremely infrequent. The violations are usually not discovered until the migrants have arrived and the harvest has begun. Closing down a camp could mean that the farmer would not be able to get his crops picked and the crop would be ruined. Under these circumstances, health officials are reluctant to exercise their statutory authority.

A final legal tool that is available to coerce the farmers into compliance with the Sanitation Code is criminal prosecution.¹³⁸ This procedure also is cumbersome and infrequently used. In one instance observed, a flagrant violation was referred to Albany for legal action in June and the legal wheels turned so slowly that by September no action had yet been brought.¹³⁹ Such delays clearly nullify the effect of the action for the summer in which the violation is discovered. In addition, even if an action is eventually brought in the fall or winter, the migrants, who would probably be the best witnesses, have already left New York.

3. *Improving Enforcement.* The existing Code is not being adequately enforced. Measures must be taken to encourage inspectors to require compliance and to encourage growers to comply.¹⁴⁰ There are at least two avenues of

135. N.Y. PUB. HEALTH LAW § 1331(1) (McKinney 1954).

136. *Id.* § 1331(5).

137. *Id.* § 1330.

138. 10A NYCRR § 1.2 (1962).

139. Camp E, Wolcott, N.Y.

140. The warning issued by the N.Y. State Health Department to 143 migrant

approach. First, changes can be made in the organization and procedures of the Health Department. Second, legal sanctions for violations of the Code can be made more severe and some of the discretion to impose these penalties can be removed. The first approach is preferable because the health officials and the farmers must cooperate and resorting to legal sanctions creates bad feelings and impedes cooperation. Another reason for emphasizing cooperation is that some farmers are impressed with their own individualism and independence and may retaliate if they feel coerced. One farmer explained that he had intended to fix his camp until some government officials tried to pressure him into a change. Then, "just to show them," he left the camp the way it was. Where cooperation is not forthcoming, however, effective sanctions must be imposed.

One important change in current enforcement procedures would be to make the Health Department's migrant operations a year-round activity. Major improvements in the camps cannot be made during the summer when the migrants are there. Presently, the Health Department concentrates its inspections and demands for repairs during the harvest season. Although the camps are inspected before the migrants arrive—all camps of more than five workers must obtain a permit from the Health Department before they are permitted to open¹⁴¹—there is no concerted effort to use the time when the camps are empty to improve conditions.

The 1967 operations of the State Health Office in Geneva, New York, which had jurisdiction over more than 200 camps, illustrates the part-time nature of the Health Department's concern with migrants. The only year-round man in the office having substantial responsibilities dealing with migrants spent only one third of his time on migrant affairs. His three subordinates, who did the actual inspections, were only employed from just before the migrants arrived until the end of the season.

Making health inspectors year-round employees would greatly increase the chance that substantial improvements will be made. With inspectors working during the winter and spring there is more time to urge and cajole the farmers instead of having to risk offending them by demanding action during the late spring or summer. This will cause less conflict between health officials' positions as neighbor and law-enforcer. On the other hand, growers will not be faced with the prospect of having to close down a camp in the middle of the harvest, virtually assuring a ruined season. They will have had ample notice that repairs must be made, and time to make them without undue interference with their harvest. No injustice can result from refusing to allow a farmer to open his camp if he does not comply when he has been given six-months' notice that improvements must be made. In addition, since the fairness of the officials' action would seem to be so clear under these circumstances, they would risk less disfavor in their communities when they refused to allow a non-complying camp to open.

camps that they will not be permitted to operate next season unless they improve conditions is a hopeful sign. N.Y. Times, Dec. 12, 1967, at 65, col. 6.

141. 10A NYCRR § 15.20(a) (1962).

IV. APPLICATION OF SOCIAL LEGISLATION

Migrant farm laborers frequently do not receive the benefits of major federal and state social legislation. They are excluded in any of three ways: First, they may be technically within the scope of the beneficial legislation but in practice may not receive the benefits to which they are entitled. Second, a statute may provide coverage for only some migrants. Third, the legislation may explicitly exclude them.

A. WELFARE LAWS

Migrants are eligible for certain benefits under the welfare laws of New York. While the "categorical assistance" programs demand that applicants intend to remain in the state,¹⁴² thereby making most migrants ineligible,¹⁴³ other parts of the Social Welfare Law establish programs that cover individuals who cannot satisfy the residency requirements. Section 158 of the Social Welfare Law states that "any person unable to provide for himself, or who is unable to secure support from legally responsible relatives . . . shall be eligible for home relief."¹⁴⁴ "Home relief" is defined to include money for shelter, fuel, food and clothing.¹⁴⁵ There is no requirement that the recipient intend to remain in the state. The regulations also make it clear that migrants are eligible for certain assistance programs:

Local public welfare agencies shall provide public assistance and care to migratory seasonal farm workers during the current season in accordance with the same standards that apply to persons having New York State residence whose need is determined to be short term.¹⁴⁶

All welfare officials interviewed conceded that migrants would be eligible to receive benefits if they met the applicable criteria of need. Welfare officials also observed that although many migrants could easily qualify, the number of migrants actually receiving aid was very small. It is difficult to determine the exact number of migrants on the welfare rolls. Welfare office forms do not indicate whether a recipient is a migrant. It is also impossible to know how many have sought welfare and have been refused assistance. No records are kept unless an individual actually fills out an application, and many officials reportedly discourage migrants from filing.

1. *The State's Responsibility.* Eligible migrants rarely receive welfare benefits for several reasons. The procedures used in making welfare available, the relationship to the community of the officials who distribute welfare, and

142. See, e.g., 18 NYCRR § 368.2(c) (aid to the aged, blind, or disabled); *id.* § 369.2(d) (aid to dependent children).

143. "[Migrants] ordinarily do not evidence intent to reside in New York State and shall therefore not be classified in the federal programs." 18 NYCRR § 310.3(a) (1962).

144. N.Y. Soc. SERV. LAW [formerly Soc. WELFARE LAW] § 158 (McKinney 1966).

145. *Id.* § 157.

146. 18 NYCRR § 310.3(c) (1962).

the situation on the camps themselves combine to limit the migrants' access to welfare benefits.

The procedure a needy person must follow in order to receive welfare is simple in theory: he presents himself at the local welfare office and prepares an application for a cash grant. The welfare office then seeks to verify his need. In the case of a migrant, the usual course is to check with the crew leader to ascertain the past earnings of the applicant. There is a maximum period of 30 days between the date of filing and the actual granting of aid, but welfare officials interviewed insisted that if the need is urgent, an immediate cash grant is made.¹⁴⁷ Section 133 of the Social Services Law authorizes such grants during the investigation period, "if it shall appear that a person is in immediate need."¹⁴⁸

The procedure for migrants to obtain welfare funds seems simple, and yet it does not work. In the first place, the migrants do not know about it. New York State conducts a program each year which is designed to inform the migrants of their legal rights and responsibilities as part of the labor force.¹⁴⁹ The effectiveness of this program is questionable. Many of the migrants interviewed knew nothing about the various welfare programs which are available to them. Many did not even know where the nearest welfare office was located.

Even if a migrant were aware of the availability of welfare he might not be able to get to the welfare office. The closest office may be 20 miles away, and many migrants cannot make this trip. Although some own cars, the majority do not. Occasionally those with cars are willing to act as chauffeurs but the rates they charge one another (often up to \$5 for a short trip) make this an unsatisfactory way to travel even when available. At a time when a migrant needs welfare assistance, five dollars carfare cannot be raised unless it is borrowed.

If a migrant knows about welfare and is able to get to a welfare office, there is still a substantial possibility that he will not receive assistance. Many more migrants now seek aid than actually receive it. Migrants who have visited the local welfare office often speak of having been told to come back some other time, or that they did not need aid and could find work if they wanted it. Some migrants said that they were given a small amount of money and told not to return.

The migrants' tales of rejection are not the only evidence that local welfare departments do not deal fairly with them. Officials in the central welfare office in Rochester express concern that local welfare officials do not always fulfill their obligations under the law. After stating that migrants who meet the eligibility requirements ought to be receiving aid, one official acknowledged that "what happens in actual practice, where you have individuals

147. Interview with J. Bellamy, Deputy Commissioner of Welfare, in Wayne County, N. Y., Sept. 11, 1967.

148. N.Y. Soc. SERV. LAW § 133 (McKinney 1966).

149. 1966 REPORT OF N.Y. INTERDEPARTMENTAL COMM. ON FARM & FOOD PROCESSING LABOR 2 (1967) [hereinafter cited as INTERDEPARTMENTAL REPORT].

dealing with individuals, isn't so clear. There are certain conservatives who discourage people from applying."

The reason that county welfare officials are reluctant to grant aid is that they are appointed by a locally elected county Board of Supervisors. Any welfare official who is anxious to remain in his job is not likely to dispense welfare funds freely. One county official, who vehemently denies that he discourages migrants from applying for welfare, admits that any substantial increase in welfare disbursements would "alarm the county fathers."¹⁵⁰

New York should take several steps to insure that migrants who are eligible for welfare receive the benefits to which they are entitled. Improvement should be directed at the three principal difficulties in the present system: (1) inadequate education of migrants; (2) inaccessibility of the welfare offices; (3) lack of state control over local welfare officials.

Because the Health Department, not the Welfare Department, regularly sends representatives to the camps, considerable improvement can be brought about by giving the Health Department a role in administration of the welfare program. The health inspector on his first visit to the camp after the migrants have arrived, and in no circumstances later than two weeks after they have arrived, should be required to distribute printed explanations of all relevant welfare programs. The text should be printed in both English and Spanish. The inspector should be required to hold a meeting at a time convenient for the migrants (probably in the evening), to explain the various provisions of the welfare law.

The health inspector should also be required to bring welfare applications to the camps and leave them with either the crew leader or the grower, and to give one to any migrant who so requests. He should have additional applications with him on all subsequent visits to the camps.

Applications by mail should be accepted by the Welfare Department. There is no reason to require that migrants make a trip to the welfare office merely to fill out an application form. To satisfy the requirement that an applicant be interviewed to determine the worthiness of his claim, interviews can be conducted at the camps by health inspectors and the New York Labor Department's local farm representative. Conducting these interviews requires no special expertise. Alternatively, the Welfare Department could use a bus to bring the migrants to the welfare office for interviews. Although adoption of these procedures would still require that the migrants take some affirmative action either by filling out and mailing the application forms or by taking the time to go to the office, it would prevent ignorance and inability to reach the welfare office from making it almost impossible for a migrant to gain public assistance. If local control over welfare officials can be reduced, the improved procedures outlined above should be even more effective.

2. *The Crew Leader.* The fact that the migrants frequently do not receive welfare assistance is not entirely the fault of the Welfare Department.

150. N.Y. SOC. SERV. LAW § 116 (McKinney 1966).

The structure of migrant society as well as the psychological make-up of the migrants tend to discourage them from seeking assistance.

One of the most important reasons that migrants do not apply for assistance is their relationship to the crew leader. Migrants are often in debt to the crew leader, who loans them money for such things as transportation, liquor, or clothing. When they work in the fields migrants often pay the crew leader's wife to baby-sit for them and they may owe him money for food or rent. This economic dependence is one source of the crew leader's control over his men. If the migrants can turn to the welfare office instead of the crew leader when they need money, their dependence on him will diminish. Many crew leaders, therefore, do not encourage their workers to seek welfare assistance.

B. WORKMEN'S COMPENSATION

New York workmen's compensation legislation does not cover all migrants. In 1966 the Legislature enacted a requirement that all farmers with an annual payroll of \$1,200 or more provide workmen's compensation.¹⁵¹ This new law, therefore, does not cover those working on many small farms. While some farmers not compelled by this legislation voluntarily participate in the compensation program,¹⁵² agriculture is too hazardous to permit any laborer to work without adequate protection. It is ". . . among the most hazardous of all industries. In 1964, when agriculture accounted for only seven per cent of total employment, 13.2 per cent of all disabling injuries and 22.5 per cent of all fatalities from work accidents occurred in agriculture."¹⁵³ Not only is agricultural work dangerous, but a disabling injury is likely to have a greater economic impact on migrants than on people holding other jobs. Hospital and surgical insurance is less frequently carried by farmworkers than by those in different occupations. The New York Joint Legislative Committee on Migrant Labor has recommended that mandatory coverage be extended to all farms with an annual payroll of \$500.¹⁵⁴ The Committee's proposal would still leave some farms unaffected but would represent an improvement over the existing situation. A more desirable alternative is embodied in the bills introduced in the New York State Legislature in 1967 which completely end the exclusion of migrants from coverage.¹⁵⁵

C. UNEMPLOYMENT INSURANCE

Agricultural workers are totally excluded from unemployment insurance.¹⁵⁶ Yet, they are frequently forced to remain idle for several weeks when

151. REPORT OF THE N.Y. STATE JOINT LEGIS. COMM. ON MIGRANT LABOR 7 (1966).

152. N.Y. WORKMEN'S COMP. LAW § 3(14)(b) (McKinney Supp. 1967).

153. Sellers, *Farm Accidents and Workmen's Compensation*, FARM LABOR DEVELOPMENTS, Oct. 1966, at 33.

154. REPORT OF THE N.Y. STATE JOINT LEGIS. COMM. ON MIGRANT LABOR, *supra* note 151.

155. S. Intro. 2894, A. Intro. 4220, N.Y. LEGIS. REC. & INDEX (1967); S. Intro. 2892, A. Intro. 4290, N.Y. LEGIS. REC. & INDEX (1967).

156. N.Y. LAB. LAW § 511(b) (McKinney 1965).

the farmers have no work for them. At such times they could be aided by unemployment insurance. Even if they were not categorically excluded, most migrants would not qualify for unemployment payments because of another provision in the New York law which makes 20 weeks of employment in the state during the previous 52 weeks a precondition for eligibility.¹⁵⁷ Few migrants would be able to satisfy that condition. There is no justification, however, in excluding those few migrants who could qualify.

Low wages, hazardous working conditions, and long periods of unemployment place many migrants in a precarious financial position. Yet the laws which protect other workers from these dangers, do not give the migrants the same protection. The benefits of welfare, workman's compensation, and unemployment insurance should be extended to migrants. In most instances their need is greater than the need of those now covered.

V. EDUCATION OF MIGRANT CHILDREN

A. CULTURALLY DISADVANTAGED CHILDREN

Migrants are among the most educationally deprived groups in the country.¹⁵⁸ Nearly one-half of all non-white migrants are functionally illiterate.¹⁵⁹ With mechanized harvesting steadily diminishing the need for migrants,¹⁶⁰ few migrant farm children can even rely on growing into the jobs their parents now have. Thus only a good education can spare most of them from being condemned to a life of poverty and unemployment.

Because of their itinerant way of life, the education of most migrant children is necessarily disjointed. Work on the harvest keeps migrant families occupied in upstate New York beyond the start of the fall school term. Some families send their children south to live with friends or relatives just before the start of the regular school term so that the children can have an uninterrupted year in school. Most of the children of New York's migrants, however, regularly start school in the fall in a local New York school system. After about two months their parents withdraw them to return to the South. It may be more than a month before they re-enroll in a public school. The dislocation detracts from learning time and precipitates uneasy adjustments to new texts, teachers, and classmates.

Annual discontinuity in their education, though a large problem, is not as great an obstacle to successful education of migrant children as the debilitating environment into which they are born. Despite their initially normal intelligence potential,¹⁶¹ migrant children cannot avoid "the intellectually

157. *Id* §§ 511(2), 527.

158. G. Haney, *Problems and Trends in Migrant Education*, in *EDUCATION OF THE DISADVANTAGED* 101 (A.H. Passow, M. Goldberg, A. Tannenbaum eds. 1967); *INTER-DEPARTMENTAL REPORT* 7.

159. The exact percentage is 44. Paper presented by Robert B. Hooper, Jr., Dir. of Educ., Seasonal Employees in Agriculture, Inc. [S.E.A.], S.E.A. Migrant Conference, June 30, 1967, at 3.

160. See note 6 *supra*.

161. G. Haney, *supra* note 158, at 102; J. LORETAN & S. UMANS, *TEACHING THE DISADVANTAGED* 5 (1966).

damaging consequences of deprived environments."¹⁶² For these children, circumstances in their homes seriously retard their mental development in many ways. Frequently no one patiently answers a migrant child's questions; he does not have toys, books, and scribbling paper; his father may seldom be with the family; and no one in the family gives him basic instruction about sounds, shapes, and colors.¹⁶³ The consequence of all this is that not being given "a substantial portion of the variety of stimuli which he is maturationally capable of responding to, [he] is likely to be deficient in the equipment required for learning."¹⁶⁴ Even before the migrant child is old enough to enter kindergarten, therefore, he already exhibits intellectual retardation.¹⁶⁵ It is probable that the retardation will be permanently disabling.

There is much support for the proposition that "as much development takes place in the first four years of life as in the next thirteen [and that] any years lost in a poor environment are almost irretrievable."¹⁶⁶ Under such conditions, effective migrant education depends on reaching the child before all of these first four "irretrievable" years are lost.¹⁶⁷ A migrant education program which neglects the normally pre-school years resigns itself to starting with five-year-old students who already bear ineradicable intellectual deficiencies. Not only does the retardation complicate a school's task, but in most cases the school's inability to meet the special problems of these children contributes to their further retardation.¹⁶⁸

Thus there is a great need for effective pre-school migrant education. Already the New York Board of Regents has proposed to offer all the State's children regular term public education beginning at age four by 1970 and beginning at age three by 1978.¹⁶⁹

B. STRUCTURING PRE-SCHOOL EDUCATION

New York's Department of Education is aware of the special problems of migrant children. Its *Handbook for the Education of Migrant Children*¹⁷⁰ discusses fully the environmental disability hampering these young students. To combat this recognized handicap, the Education Department has developed Migrant Summer Schools for children five years of age and older. By stressing a plan which starts after retardation has set in, the State's migrant education curriculum not only misses the opportunity for preventing the disability from occurring but may be joining the fight after the crucial battle has been lost.

162. T. Pettigrew, *Negro American Intelligence: A New Look at an Old Controversy*, in *THE DISADVANTAGED CHILD* 101 (J. Frost & G. Hawkes eds. 1966).

163. M. Deutsch, *The Disadvantaged Child and the Learning Process*, in *EDUCATION IN DEPRESSED AREAS* 167-68 (A.H. Passow ed. 1963).

164. *Id.* at 168.

165. See J. LORETAN & S. UMANS, *supra* note 161, at 8-9.

166. *Id.* at 19.

167. *Id.*; see M. Goldberg, *Factors Affecting Educational Attainment in Depressed Urban Areas*, in *EDUCATION IN DEPRESSED AREAS* 92 (A.H. Passow ed. 1963).

168. G. Haney, *supra* note 158, at 102.

169. N.Y. Times, Dec. 22, 1967, at 20, col. 1.

170. N.Y. Dep't of Educ., *Handbook for the Education of Migrant Children in N.Y. State* (1966-67) (mimeo).

Experience demonstrates that it is easier to identify a need for pre-school education than it is to implement a successful pre-school program. The federally sponsored Head Start schemes for ghetto-mired four-year-olds have frequently suffered from not applying the best available methods and consequently have not been universally successful.¹⁷¹ These early efforts have indicated that designing an effective pre-school program requires special knowledge and coordination that go beyond the requirements of a normal education system. With proper groundwork, though, pre-school education has been successful in preventing culturally induced retardation.¹⁷²

New York does not have to start from scratch in building a pre-school program for migrant children. It already has some of the elements of such a curriculum in the Migrant Child-Care Program operated by the Department of Agriculture and Markets. Recently much expanded through federal assistance, the Program involves 1,800 children eight weeks to 13 years old who are brought daily during the summer and fall to 29 local centers.¹⁷³ There, much as at a good nursery school, they are exposed to games, arts and crafts, and other activities.¹⁷⁴

In operating the Child-Care Program, the Department of Agriculture and Markets works with an awareness of the disabling effects which the migrant household environment has on children. The Department specifically tries to mold the Program into a curriculum which would counteract the effects of an adverse cultural background.¹⁷⁵ Nevertheless, the success of the Child-Care Program as an effective pre-school plan is severely hampered by the paucity of the training given to the people who must staff the centers. Only part of a one-week training conference is devoted to problems of pre-school mental development.¹⁷⁶ The women in charge of the 29 centers need much more preparation than this to deal with the delicate, complex problem of cultural deprivation.

Because of the vigorous leadership which now guides the Migrant Child-Care Program, there is reason to believe that a better pre-school plan can be developed within the present framework. Nevertheless, the Department of Agriculture and Markets should seek greater assistance from the New York Education Department. The Department of Education has a stronger background in areas which should enable it to design a sophisticated pre-school curriculum and train pre-school staffers effectively. This expertise of the Education Department can be expected to increase as it prepares to implement the recent Regents plan for State-wide pre-schooling.¹⁷⁷

In further restructuring the Child-Care Program, much greater inter-

171. Interview with Professor Helen F. Robison of Teachers College, Columbia University, in New York City, Dec. 14, 1967.

172. *Id.*; see N.Y. Times, Jan. 14, 1968, § 4 (Week in Review), at 13, col. 2.

173. INTERDEPARTMENTAL REPORT, *supra* note 149, at 2.

174. *Id.* at 4. The older children were involved in more sophisticated activities.

175. *Id.* at 3.

176. *Id.* at 2, 5.

177. See note 169 *supra*.

action with the migrant parents must be achieved. The dominant influence on the child's intellectual development is his parents, and a successful scheme to prevent pre-school retardation must include them.¹⁷⁸ The Program should therefore enlist the parents' cooperation and instruct them both on the importance of devoting greater attention to their young children and on creating a more stimulating home environment.

The effectiveness of any programs New York develops for pre-school education of migrants will be reinforced or diluted by the existence and quality of similar programs in other states in the Atlantic migrant stream. However, the possible failure by other states to provide migrants with reasonable opportunities for education should not excuse a similar failure by New York.

C. THE REGULAR SCHOOL CURRICULUM

New York's Education Department has established an ambitious and successful Migrant Summer School program. Operated for six weeks each year, the Migrant Summer School offers 1,600 children between the ages of five and 13 remedial training in reading and arithmetic, in addition to its efforts to provide "cultural enrichment."¹⁷⁹ The program is financed mostly with federal money¹⁸⁰ and administered primarily through Albany. Teachers find that the children respond favorably and are stimulated by the program. Tests show that many of the children make gains in academic skills.¹⁸¹

Although the Migrant Summer Schools are well staffed and administered, there are two ways in which they should be strengthened. Preferably the duration of the program should be extended beyond six weeks, or alternatively, the timing of the program should be chosen to coincide with the peak of migrant presence in a particular school district.

Once the regular term begins, soon after Labor Day, practically all school-age migrant children enroll in the regular sessions at local public schools and are placed in classes along with permanent residents. School buses pick them up at the labor camps.

With their unique needs migrant children should be receiving special attention. The local schools, however, provide few special programs for the migrants. Better programs for migrant education during the regular term should provide remedial assistance and cultural enrichment. The schools

178. Interview with Prof. Robison, *supra* note 171; A. H. Passow, *supra* note 167, at 337.

179. Interview with Pat Hogan, Ass't Director, Migrant Education Division, N.Y. Dep't of Educ., in Rochester, N.Y., Sept. 12, 1967.

180. 20 U.S.C. § 241(b) (Supp. I, 1965); Economic Opportunity Act of 1964, tit. III, § 311, 42 U.S.C. § 2861 (1964). In 1966 New York received through these acts \$388,266 for migrant education programs. N.Y. STATE DEP'T OF EDUC., SOMEONE CARES, REPORT OF THE 1966 SUMMER SCHOOL PROGRAM 1 (1966).

181. For example, the Sodus Central Schools found an average gain of 4.1 months in reading ability over the month and a half of summer school and a gain of 2.4 months in arithmetic. But not all the children were reached by the teachers' efforts; about one-quarter made no advance in reading, and one-half did not gain in mathematics. Interview with Arland White, Ass't Supervisor of Curriculum, Sodus School System, in Sodus, N.Y., Sept. 11, 1967.

should seek special training for teachers to improve their ability to work with culturally disadvantaged children. Such training programs exist for teachers in the Migrant Summer Schools.¹⁸² The program should be extended to regular-term instructors. The migrant children should be provided with breakfast and lunch when it is apparent that poor nutrition is impairing their schoolwork.

New York State should encourage this special attention for migrants during the regular term by contributing more per pupil state aid for migrants than is contributed normally for daily attendance. Pennsylvania and Colorado currently make such additional payments to school districts for regular-term migrant education.¹⁸³

New York should also take the initiative in developing interstate cooperation in migrant education. Migrant children frequently transfer to different schools as their parents move from state to state. At present interstate cooperation is limited to the exchange among schools of the one page "Transfer Record for Migratory Children," and some schools do not extend even this much cooperation. The Transfer Record states the results of standardized tests and reports the child's progress in various textbooks. Aside from these unilateral communications, New York makes no other attempt to foster interstate cooperation in solving the problems of migrant education. By contrast, the states which draw labor from the mid-west migrant stream met during November 1967, in Texas, the base state of that stream, to discuss their mutual educational task.¹⁸⁴

Finally, the states in the Atlantic migrant stream should make use of the Agricultural Worker Schedules compiled largely at the Florida Pooled Interviews by the U.S. Department of Labor. Using these Schedules, it is possible to predict where a large part of the migrant labor force will be residing at a given time and when it will move. With this information, "receiving" school systems could contact "sending" schools ahead of time to develop plans to minimize the educational loss in student relocation. Ideally the schools could cooperate to develop remedial curricula and pre-school plans so that special efforts in one state could be reinforced by similar efforts in other states.

Education is one of the most important personal services which states provide. If a state performs that service well it may avoid having to provide many welfare services later. If the degradation and insecurity of today's adult migrants are to be prevented in the next generation, education must begin to play a more active, creative role.

VI. CONCLUSION

A. MIGRANTS: EXPLOITED AND UNPROTECTED

The 17,000 migrants who labor in New York State are victims of systematic exploitation. Migrants are drawn North without any written assur-

182. *Id.* During 1967 the training was given at Brockport and Genesco, N.Y.

183. COLO. REV. STAT. ANN. § 123-29-5 (Supp. 1965); PA. STAT. ANN. tit. 24, § 25-2502.2 (1962).

184. Interview with Prof. Robison, *supra* note 171.

ance as to level of wages or continuity of employment. They have no bargaining power, and their crew leaders have no interest in bargaining on their behalf. As a result, the average migrant family subsists on about \$3,300 a year. Payments made to the crew leader often substantially reduce this amount.

The migrants' weakness in defending their economic and welfare interests is compounded by inadequate legal protection. They are excluded from federal and State guarantees of the right to bargain collectively. They are excluded in practice from their proper welfare benefits by local officials. An inadequate, poorly enforced Sanitary Code allows growers to house migrants in cramped quarters without nearby kitchen or sanitary facilities. The State minimum hourly wage law still excludes migrants, and the federal minimum hourly wage law fails to protect migrants, whose low income is primarily the result of poor work scheduling rather than low hourly wage rates.

B. BETTER USE OF EXISTING REMEDIES FOR MIGRANT PROBLEMS

1. *Improved Enforcement.* New York should take vigorous action to encourage compliance with existing migrant-labor laws and regulations. The Health Department should operate in the migrant camps on a year-round basis. The Welfare Department should make available to the migrants complete information about welfare programs and facilitate access to welfare offices. Both the United States and New York Departments of Labor should demand compliance with the requirements that wage data be posted in all camps.

To protect the migrants against fraudulent representations by crew leaders, the United States Secretary of Labor should actively enforce the Federal Act requiring pre-recruitment wage disclosures. Federal regulations should be promulgated ensuring that crew leaders' promises be made in writing. Such communications should set forth the probable periods of employment and amount of wages which a first-year worker could expect to earn. Federal regulations should also require growers in one state to send complete job information to potential recruits in another state.

2. *Better Coordination.* Too frequently the activities of the various state agencies dealing with migrants are not coordinated with each other. The State does provide a common forum for these agencies known as the Interdepartmental Committee on Farm and Food Processing Labor.¹⁸⁵ This Committee, however, does not take an active role in establishing cooperative, interdepartmental programs. It serves merely as a vehicle through which the constituent agencies report to each other on their own programs. Effective cooperation could bring substantial benefits through (a) the use of health inspectors and local Department of Labor farm employment representatives to distribute information about welfare programs and to conduct "need interviews" at labor

185. The Interdepartmental Committee is composed of the N.Y. State Departments of Health, Labor, Education, Social Services, Agriculture and Markets, Police, and Motor Vehicles; the Joint Legislative Committee on Migrant Labor and the Extension Service of the N.Y. State College of Agriculture are also members. See *Foreword*, INTERDEPARTMENTAL REPORT, *supra* note 158.

camps; (b) the bringing of the Education Department's expertise into the Department of Agriculture and Markets' Child-Care Program to help create an effective pre-school curriculum for the culturally disadvantaged migrant children; and (c) more communication between the Department of Labor and the Education Department so that local schools can learn which southern school systems are likely to send children to New York in the spring and receive children from New York in the fall.

Finally, both interdepartmental coordination and operations of individual agencies could be substantially improved if officials who insist that migrants are being treated adequately were replaced. Such action, in view of both the great political strength of the growers and the migrants' lack of influence would demand considerable courage on the part of those with the authority to make appointments.

C. IMPROVED LAWS REGULATING MIGRANT FARM LABOR

Improvements can and must be made in existing provisions pertaining to migrant wages, crew-leader abuses, housing, and sanitation. The effect of these changes need not cause a sharp increase in labor costs.

A pay system which guarantees minimum earnings during each week and each four-week period would not substantially alter labor costs. It would encourage growers to use migrants during harvest lulls for non-harvesting jobs. In addition, growers can cooperate so that migrants can be shared among them. By encouraging efficient use of labor, a new wage-guarantee system could give the migrants more income without increasing their hourly rate of pay.

The New York Sanitary Code should be amended to increase the minimum-footage requirements for migrant housing. In addition, new requirements should be added to provide for family facilities. Only existing housing which is less than five years old should temporarily escape these more rigorous standards. This delay will lessen the immediate economic effects of the proposals and allow growers a reasonable period to comply with them. Conversion of existing buildings to meet the new requirements will frequently be possible and will cost substantially less than new construction.

Changes should also be made in the Sanitary Code provisions for cooking facilities and toilets. For example, flush toilets should be mandatory and toilets and washing facilities should be required in the fields where the migrants work. Federal and State collective bargaining laws which exclude migrants from their coverage should be amended. Given this protection, migrants could more easily form unions. Unionization might bring about improvements in wages and working conditions.

D. NEED FOR IMMEDIATE IMPROVEMENT

Advancing mechanization steadily reduces New York State's need for migrant farm laborers. In ten to 20 years the need for migrants may disappear completely. This possibility makes it imperative that even more attention be

paid to the immediate educational needs of migrant children. Unless they are able to find work in other areas of the economy when harvesting jobs become unavailable, the children of today's migrants may become unemployable public charges. Only improved educational programs can prepare migrant children for jobs in other fields. New York State has taken important steps to improve migrant education, but its pre-school programs for migrant children should be expanded.

It does not matter that advancing mechanization may erase the need for migrants in ten or 20 years. The current needs of migrants must be met now. Like other citizens, today's migrant deserves a decent place to live, fair working conditions, and reasonable wages.

REPORT OF THE PROJECT DIRECTOR

Camden Regional Legal Services, Inc.
Farm Worker Division

Number 3
August and
September, 1969

This report covers the most active months in the brief life of the Farm Worker Division. As a result of many relationships established during our infancy, we have confronted a significant increase of individual matters. August and September also represented, of course, the peak number of seasonal farm workers present in the three-county area this year. The following capsule sketches provide an idea of the nature and variety of cases and situations considered by Farm Worker Division staff during this period.

CASES

1. Criminal.

A. We visited a 16 year-old boy in Salem County Jail. He had received two tickets, one for driving without a license, the other for careless driving, after an accident causing no serious injury to other parties. He was held as a juvenile and the case assigned to a county probation officer. Although in jail for more than two weeks, he had not been visited by his probation officer; no one had made any attempt to secure his release.

Conversations with probation staff convinced us he would receive no immediate attention. Having pre-arranged for the possibility of securing his release in custody of the Father Fitzgerald Memorial Migrant Center in Vineland, we brought the matter to the attention of the visiting presiding judge. The judge, apparently

briefed by the probation office, had been under the impression that the juvenile was an adult. Apprised of his true age and the complete circumstances surrounding the case, the judge released him in custody of the Migrant Center. At his trial six weeks later this farm worker was fined \$15 and his case terminated.

B. The question of trespass was raised in another case. A Puerto Rican farm worker under contract with the Glassboro Service Association (GSA) had left one farm in the Swedesboro area after disagreements over behavior with other men living there. He believed their rowdy conduct interfered with his ability to earn a maximum amount of wages. He returned to the GSA Camp and was immediately reassigned. A week later he returned to the first farm to collect his final week's wages, maintaining that his sick wife had written for additional money. He entered the crew leader's cabin and requested his assistance; the crew leader returned from a conversation with the farmer accompanied by the farmer and a policeman who arrested him for criminal trespass.

In municipal court, the farmer testified that this farm worker was a troublemaker, that the farmer had fired him because he had caused other workers not to work one day. He stated that he called a representative of the GSA Camp to instruct the man to leave and never return. He further testified that when he spotted this worker on his property the following week, he called the police and without further warning had him arrested for trespassing. The worker contradicted the farmer's testimony and maintained he never saw the representative from GSA. He also testified another man had cajoled his fellow workers into indolence on the day in question.

Interestingly, after 30-45 minutes of testimony and over strenuous defense objection, the magistrate on his own motion

continued the case until the following week to allow the State to produce the representative from GSA. At the second hearing, this representative corroborated the farmer's testimony in all particulars.

The court found the defendant guilty of trespass and fined him \$15 together with \$10 costs. The court reasoned:

- (1) That the joint testimony of farmer and GSA representative outweighed that of the farm worker;
- (2) That proper statutory notice against trespass was given, rejecting a defense argument that notice in general did not satisfy a requirement of notice under the circumstances since it was not clear he could not return even to collect wages lawfully due; and
- (3) That any rights deriving under his contract with GSA were enforceable in a court of law and not on the premises of the farmer (we argued the defendant, a contract worker whose contract had not yet terminated since that required prior written notice to the central office of the Department of Labor of Puerto Rico and full payment of wages due, was yet in a contractual relationship with the farmer and entitled to enter the latter's premises to enforce his contractual rights; that he had only gone to the crew leader's cabin, his immediate superior at that farm, for the purpose of seeking assistance in enforcing these rights).

This farm worker declined to exercise his right to appeal.

C. In another fascinating case, we represented a Puerto Rican farm worker accused of drunk and disorderly conduct, malicious damage to property, and offensive language (the latter two being

brought to his attention on the evening of the hearing). Unable to post \$200 bail, he spent two weeks in Gloucester County Jail. The case was noteworthy in two interesting respects: 1) The farmer felt moved to retain an attorney to prosecute the case, certainly an unusual circumstance, and 2) waving an economic club, the farmer came armed with a check for all monies owing the defendant, minus deductions for alleged property damages, in exchange for the farmer's agreement to drop all charges. Summarizing an extremely complicated set of circumstances, we advised the worker of his opportunity to settle. Given the inequities of a situation typical in the experiences of seasonal farm workers, we terminated a lengthy stretch of negotiation with both sides reaching a financial accord and charges were dropped.

As a result of information obtained during this case, we requested that the Gloucester County representative of the Wage and Hour Bureau investigate this farmer for unlawfully withholding wages from farm workers. Subsequent feedback from the investigator validated our assumption; he also noted that after extended discussion the farmer agreed to adjust his pay practices to State requirements.

D. Still another case illustrates the incredibly informal procedures found in the administration of criminal justice as applied to seasonal farm workers. A material witness, the victim, languished three weeks in Cumberland County Jail under \$2,000 bail, while the defendant (a permanent employee of the farmer) was released on \$2,000 bail provided by the farmer. The Prosecutor's Office indicated the county judge was personally interested in resolving this situation; a discussion with the judge confirmed this. The judge brought the two men before him and charged them both with disorderly conduct (the case originally involved one charge of atrocious assault and battery, an indictable offense);

he found the original defendant guilty but released him in the farmer's custody and discharged the witness after a mild tongue lashing.

Our investigation revealed that the farmer had spoken with the county detective and county judge and informed them he needed both men working immediately; that since no one had been seriously injured (the material witness suffered a gunshot wound), the matter should be summarily and quietly terminated. In the three-county area a dispute among farm workers themselves, not resulting in injury to members of the community, is not untypically resolved outside of traditional channels of justice. The case is, of course, indicative of the informal procedures which our attorneys must adjust to from time to time.

E. A number of cases pending continue to illustrate the urgent need for a bail project (discussed in a subsequent section). A Puerto Rican farm worker awaiting trial for atrocious assault and battery has spent over five months in Salem County Jail for lack of \$500 bail. Investigation clearly indicated the man was innocent and acted in self defense. Although a public defender was assigned early in the chronology of this matter, the farm worker had no knowledge of this fact, raising a serious question concerning legal efforts in his behalf. This man's crew leader had also been charged in connection with this incident; thus there has been a distinct fear by other workers at the farm to say anything implicating the crew leader. The enormous power of crew leaders allows them considerable opportunity to bring pressure against workers within their sphere of influence.

F. Even more startling is the situation of a Puerto Rican farm worker who spent two months in Camden County Jail before

receiving a preliminary hearing on larceny of auto charges. We eventually represented this young man at a municipal court hearing on four motor vehicle charges arising out of the same incident. The Public Defender's Office, representing him on two indictable offenses in separate counties, has not yet responded to continual prodding on this man's behalf. We are presently investigating the possibility of suing both local police and county officials in Atlantic and Camden Counties.

G. Similar examples abound. We represented in municipal court an 18 year-old Puerto Rican farm worker who had spent three weeks in Gloucester County Jail without formal charges ever having been lodged against him. He had been arrested on complaint of his crew leader for an alleged theft of \$57. He was deposited in jail, under \$150 bail which he was incapable of raising, and held for a hearing three weeks hence. Neither the crew leader who originally called the police nor the arresting officer ever signed a formal complaint against him. For lack of prosecution the magistrate dismissed the charge that was never made. We are currently researching the possibility of a civil suit based on these facts.

H. And there are more. In the Swedesboro area murder case referred to in the last report, we continued providing information to the Public Defender's Office. Another case involved three men in Cumberland County Jail for over three months on an extremely questionable charge of possession of a concealed deadly weapon in Bridgeton. Note that in this case each man was unable to meet even \$100 bail. In fact, the bail system is being used as a means of punishment when applied to the great percentage of seasonal farm workers. In yet another case, a man spent three and a half days in jail charged with an offense, failure to pay a taxicab fare, which carried with it a maximum of \$25 fine. Again,

we supplied an interpreter for a farm worker who had spent two weeks in jail for allegedly stealing a small amount of money from fellow workers. The man was found guilty and credited with time served.

2. Motor Vehicles.

A. Although generally the Division does not represent farm workers accused of motor vehicle violations, we have informally provided advice and on occasion supplied interpreters in certain of these matters. We represented one Puerto Rican man in a motor vehicle situation illustrative of a pattern, established in the foregoing section, facing farm workers picked up by police in the three-county area. The man having been involved in a one-car accident in the early A.M., was arrested the following morning and placed in Gloucester County Jail under \$1,000 bail. He was charged with driving without a license, driving without a registration, leaving the scene of an accident, careless driving, resisting arrest, and possession of a stolen car.

We learned of this situation from two different agencies contacted by the man's family and met with him the evening of the hearing. According to the farm worker, he left his cabin late one evening to purchase medicine for his sick child and while returning home lost his way. He soon became drowsy, cracked into a tree but managed to return home by foot. He was awakened the next morning by troopers bursting into his room; they arrested him and removed him to the county jail. He stated he had indeed purchased the car and that his farmer advised him the registration appeared faulty. In fact, the farmer had told him the car was probably stolen and that he should not use it. The man followed this advice and did not use the car until the night in

question some eight days later; he believed that under the emergency circumstances, he should use it. He was not informed of right to counsel during the two weeks he remained in jail.

We managed to have the last three charges dismissed since the arresting officer had not previously lodged them against him, but were in fact attempting to fill them out in court. The farm worker was found not guilty of leaving the scene and fined \$10 apiece for having no license and no registration, together with costs, more than covered by time spent in jail.

B. The Division is presently representing a Puerto Rican farm worker charged with three motor vehicle violations. We continued our involvement after an investigation pointed to discrimination by the arresting police officer. The investigation clearly indicated fault lie with the other party.

3. Crew leaders.

A. Registration. The Division, working with the Salem County representative of the Wage and Hour Bureau, provided information leading to an investigation by the Bureau of Migrant Labor into activities of an infamous crew leader in Salem County. This crew leader was prosecuted under state law for being unregistered and fined \$100.

B. Illegal Sale of Alcoholic Beverages. In a case described in Report No. 2 we assisted a farm worker attempting to prosecute a crew leader, a notorious price gouger, for illegal sale of alcoholic beverages, an indictable offense. Recent developments suggest the route taken was not the most effective. The Prosecutor's Office was not interested in activities occurring among farm workers themselves. It recommended the matter be

returned to the municipal court from whence it came and it was so done. Unfortunately at this late date the prime witness could no longer remain in New Jersey. In the future it would appear the most effective route would be a disorderly charge against this type of crew leader. The arrest and subsequent publicity, putting the particular crew leader on notice his activities were subject to surveillance, might serve as a minimum protection for the workers.

4. Civil Rights Violation: Public Accommodations.

In a situation noted in the previous report, involving an investigation into discriminatory practices of two barber shops in Swedesboro, we supervised the following investigation: we sent a white person into the two shops; in one he received a hair cut, in the other an appointment for one. A Puerto Rican then entered the same barber shops; in the first he was denied a hair cut, in the second denied an appointment for one. We referred this information to the Division of Civil Rights, Department of Law and Public Safety, of the State of New Jersey. Acting on this information, they prepared and served affidavits and complaints against the two barber shops.

The Civil Rights Division later informed us the complaint against the appointments only shop had been dropped for no probable cause, that the affidavit was not sufficient on its face. Regarding the other, based on a preliminary investigation that probable cause existed, its owner was brought in for a conciliation, conference. We are presently awaiting the results of this conference.

5. Wages.

The Division referred two wage complaints to the Department of Labor office of the Commonwealth of Puerto Rico in Camden

which satisfactorily disposed of them. In another situation in which we conducted an investigation, we were unable to prove a violation. The particular case centered on the system utilized by most farms for checking each worker's production. This system of numbered tickets (each worker receives one number and places tickets with that number in each basket he fills) is, of course, subject to inequities and outright cheating. Farmers claim that an alternative method, actually counting each individual's baskets immediately after they are filled, is impossible except on very small farms.

6. Labor Camps.

A. Status of the Farm Worker at the Camp. In an emergency situation, illuminating for its reflection of the typical farmer's attitude toward farm labor in this area, we obtained an additional week's stay for a family of workers summarily evicted from their camp that morning. The farmer had feuded with one of them concerning who wanted to work when and under whose direction. A fair enough problem.

The farmer, during negotiations, wanted to establish one essential point: he never wanted to fire all of these workers but, although one was the troublemaker, they had acted in concert by following his example and therefore all had to leave together. He emphasized he was most disturbed because he had always been capable of looking after his people, his workers, without them searching in Bridgeton for some lawyer or anyone else to help them.

B. Housing Problems. In at least four situations the Division has assisted seasonal farm workers attempting to leave the migratory stream and settle in various communities in this

area. We have, of course, been increasingly so occupied as the farm season terminates. In two of these instances we are assisting families in negotiations with real estate agents concerning the purchase of homes.

7. District Court Action.

In another case, we have instituted suit in Cumberland County District Court against a local car washing establishment for slitting the seats of a farm worker's car. Although the proprietor admitted liability to the worker, he refused to give him satisfaction of any compensation whatsoever. The farm worker has sued as a matter of principle, incensed at the unfair treatment afforded him by the owner of this establishment.

8. Administrative Discrimination.

We are currently involved in a shocking case of abuse of administrative responsibility on the part of the Salem County Migrant Health Program. An extremely long and complicated series of events has left this case very much alive at the present time. The matter concerns lack of treatment afforded two seasonal farm workers over a three to four month period. We anticipate a further and fuller report in the near future.

9. Workmen's Compensation.

The Division continued its practice of referring workmen's compensation cases (two during this period) to the Commonwealth Office in Camden, for their referral to a lawyer handling these cases for them under the contract.

10. Miscellaneous.

In various other situations, the Division assisted a farm worker untangle medical problems left over from the state of

Florida; assisted another to recover \$100 taken from him under false pretenses; is assisting a man obtain Veterans Disability payments from the Veterans Administration Office in Philadelphia; and is assisting a woman obtain notice of divorce in order to allow her to remarry and change her childrens' names to that of her new husband.

PERSONNEL

There have been two personnel changes during this period. Ralph Gonzalez, our investigator, returned to college in late August. We then arranged with the Farm Worker Division of SCOPE, the local community action agency with which this Division coordinates, to utilize the services of one of its field workers, Wilson Rodriguez, to the extent necessary. On October 3, his employment terminates there and on October 6 he joins this staff as a full-time investigator.

One of the Rutgers law students, Doug Langen, participating in the Clinic in Law Program of Camden Regional Legal Services, Inc., joined the staff in September and will devote ten hours a week to the activities of this Division. He will spend one day a week in Bridgeton, and will engage in research assignments at the law school. Doug is a second-year law student and has previously served as a Peace Corps Volunteer in Bolivia.

FIELD INVESTIGATIONS

During the past two months the Division has become increasingly more active, hopefully more sophisticated, in pursuit of field investigations. From originally distributing pamphlets and explaining the services of our office, we have uncovered a

wide variety of legal violations and of discriminatory treatment by farmers, crew leaders and public agencies. We have worked more closely with certain other agencies, notably the Wage and Hour Bureau, and on occasion have conducted investigations jointly with its personnel.

By mid-August, we had become well known enough that investigations usually followed requests from farm workers themselves or from the various social agencies. Indeed, interested crew leaders quite knowledgeable of abuses on neighboring farms also made contact. A number of important individual cases with which we have been involved are a direct result of field investigations.

Often an investigation in response to a complaint involves nothing more than mistrust and misunderstanding. Farmers, often evading responsibility to their workers through use of crew leaders, typically have poor habits of communication. Although many farmers do comply at least minimally with the letter of the law on matters such as wages and camp conditions, inevitably they exhibit the same patronizing attitude of local authorities and members of the community-at-large. For example, in one situation uncovered in a field investigation a farm worker had been injured by the farmer himself in a job-related accident. The farmer took the man to his doctor who treated him and forwarded a report to the farmer's workman's compensation carrier. The carrier was to start sending payments to the man upon arrival in Florida. Unfortunately, the farmer had not adequately explained this arrangement to the now distrustful worker. We suggested the worker contact a doctor in Florida and obtain an independent estimate of his injury.

To date, we have not confronted a situation necessitating a lawsuit directed against the trespass laws of New Jersey. Although there have been a number of confrontations with farmers, these have been satisfactorily resolved in one manner or another. We have heard, of course, many rumors that farmers in this area are quite upset by the nature of our activities and aggressive explorations. In any event, the Division has collected a fair amount of experience regarding field investigations as well as numerous materials regarding the nature of the trespass suit. We will tolerate no effort to restrict our rights as attorneys; and the rights of farm workers as human beings, to consult with and advise our clients in the privacy of their homes.

LEGAL EDUCATION

We continued distributing a pamphlet entitled "Farm Worker Rights" (in both English and Spanish) at the various labor camps visited. We also distributed these pamphlets and other materials introducing the Division at various meetings and Migrant Health Clinics. There we explained the function of our office and the services it could provide. At a migrant adult education class, we addressed a group of thirty workers on problems of discrimination in their area. We discussed possibilities of group action and introduced the idea of consumer co-operatives and their possible benefits for seasonal farm workers.

The crew leader of one farm near Swedesboro held a meeting, the first of two in this camp, in which we met with representatives from the SCOPE Farm Worker Division, the Commonwealth of Puerto Rico office in Camden, workers from a number of farms in the area, and others from Swedesboro itself. In addition to exposing more workers to the existence of this office, the meeting allowed the crew leader and others to speak on a number of subjects important to the farm worker population.

They discussed the problem of free access to farm labor camps. Workers related numerous instances in which family members and friends were not allowed to enter a camp or were thrown off immediately upon discovery by the farmer. This discussion was particularly interesting and marked the first instance in which we witnessed farm workers themselves express resentment against the trespass law.

The men also discussed the fact that many farmers were firing and throwing workers off camps toward the end of the summer without paying a final week's wages or bonus money (money promised the worker if he remains until the season terminates, calculated, for example, at 2¢ a basket for tomatoes). They analyzed working conditions, such as rest and refreshment breaks during the work day, and suggested possibilities for alleviating present conditions.

The final major area discussed was police conduct. A number of men related past horror stories involving police and farm workers. We advised them of opportunities for assistance through use of Legal Services when confronting problems with local police and the court structure.

We invited representatives of the United Farm Workers Organizing Committee in Philadelphia to another meeting at this farm. A representative from the AFL-CIO presently organizing farm workers in New York also attended. They showed a movie explaining the origin and history of the grape strike and boycott, and discussed possibilities for action by farm workers on their own behalf in this area, an entirely novel concept.

SOCIAL SERVICES

The Farm Worker Division has established a practice of offering comprehensive assistance to farm workers with legal

problems, of introducing the client to other available services in the community. Also, as a result of increased experience in the field, a growing number of agencies and individuals have contacted the Division for extra-legal assistance. Not unexpectedly, in most instances the problem was of an emergency nature or so defined by the individual notifying us.

The Division's social worker has encountered a wide variety of problems not requiring legal assistance. A quick glance at the nature of some of these illustrates their variety:

- (1) A number of individuals received emergency assistance in returning to Puerto Rico.
- (2) Arrangements were made with the Father Fitzgerald Memorial Migrant Center in Vineland to accept custody of a juvenile otherwise facing two months in jail awaiting a hearing.
- (3) A young girl from a family of Puerto Rican farm workers was assisted in efforts to enroll in a local high school.
- (4) Shelter and jobs were found for two young farm workers released from jail with no place to go.

We increased communication with Puerto Rican agencies in Vineland in order to further discussion of their involvement with Puerto Rican farm workers in the three-county area. These organizations are of particular assistance in obtaining specific services. We also met with the Camden Adult Basic Education Learning Center and discussed the possibility of establishing the GDE (High School Equivalency Test) in Spanish for the Puerto Rican population in South Jersey, including seasonal farm workers.

After receiving various complaints concerning the Salem County Migrant Health Program, this Division and the Farm Worker Division of SCOPE developed a questionnaire for discovering how farm workers reacted to this program. We conducted a number of interviews at farm labor camps in the county. One of the interesting facts uncovered by this investigation over a two to three week period was that nearly all medical problems reported were either eye or dental problems (a result, no doubt, of the fact that almost anyone coming in contact with this program received an eye and dental examination, but little more).

Throughout, representatives of our offices believed workers were uncomfortable responding to these questions, that they were not expressing their true feelings. The last three questions asked:

- (1) How did you feel about the way you were treated?
- (2) Did you feel that you were treated differently because of your race or language?
- (3) What improvements are necessary?

We did not get responses of a majority of workers on these questions. When opinions were obtained they were quite negative and generally expressed a feeling of "differential" treatment. However, as a result of increasing time devoted to other problems and the difficulty of soliciting adequate response, the interview has been postponed indefinitely.

As the farm season terminates, our social worker has begun establishing contacts with farm worker families remaining over the winter. Note that although most clients during the season were individual male workers, it is the relatively few

families in this area who are remaining. The heads of these households are typically crew leaders having other jobs in the off-season. We hope to establish close relationships with these families, offer supportive services during the winter, and inform crew leaders of the opportunity for legal services for their workers next year.

CO-OPERATIVES

An unexpectedly heavy case load has not allowed Chris Peper the time anticipated to devote to promotion of co-operative activity. Nonetheless, he has conducted a number of interviews and meetings aimed at a realization of the buying club idea originally proposed to the Salem Welfare Rights Group (including many seasonal farm workers) by John Rogers, Director of the Bridgeton Area Center of SCOPE. It is clear that in order to purchase the necessary bulk required for significant savings, the services of this club must also be available to groups in Bridgeton and Vineland. Groups in these areas have been contacted and although they are enthusiastic, they do not as yet have the organizational preparation necessary for an effective club. In any event, continued SCOPE involvement will be essential to further success.

We have contacted two wholesalers of meat. One of them, located in Pennsauken, will sell his meat at quite reasonable prices but provide no delivery service. This would necessitate the monthly renting of a refrigerated truck to collect the meat and deliver it to SCOPE area offices in the three cities. Storage facilities would be required. The second wholesaler will deliver to each center at no extra charge on a bi-weekly basis. This

should enable members to store and consume fresh meat without packing it into freezers every month.

Although formation of a credit union concomitant with a buying club also has been strongly urged, it does not appear feasible at the present time. The current plan itself demands a minimum of trust and cooperation on the part of each member. Each group must arrive at a consensus regarding the quantity and type of meat it will purchase, and each member must collect his meat upon delivery. Note that the prepayment plan places the burden of loss due to spoilage on each purchaser. Most importantly, SCOPE personnel have emphasized that while SCOPE now acts as an organizational focus for this group, leadership must be generated from among the beneficiaries themselves.

CEDARVILLE COMMUNITY RECREATION ORGANIZATION, INC.

Although presently incorporated, Cedarville Community Recreation Organization, Inc., has been in need of additional community development. Unfortunately due to the daily pre-occupations of this office, we have been unable to devote sufficient time necessary for that function. We intend to increase our communication with this group in the near future.

During the past two months, the group has received its Employer Identification Number from the Internal Revenue Service, but was denied an exempt organization permit (Form ST-58) by the State Sales Tax Bureau of the Department of the Treasury. This Bureau determined the organization does not qualify for classification as an exempt organization pursuant to either subsection (A) or (B) of N.J.S.A. 54:32B-9. Unfortunately, we are now in agreement with that interpretation of the applicable statute.

We have prepared and submitted to the Department of Community Affairs a brief document (enclosed) containing information about the nature and actions of CCRO, in anticipation of a more formal request for funds in the future. Likewise, we have contacted the Director of Neighborhood Facilities Programs, Department of Housing and Urban Development (Philadelphia Regional Office) and have received voluminous materials regarding the requirements for grants under this program. Again, we hope to investigate these possibilities over the coming months.

BAIL PROJECT

The State of New Jersey is in urgent need of a bail project for its seasonal farm workers. As witnessed in this report, the experience of the Division in recent months validates this assumption. We have been directly concerned with or have witnessed too many situations in which unfamiliarity with the language and system of criminal justice, coupled with a lack of substantial monetary resources, has worked grave injustices on the farm worker community. We will continue to explore materials pertaining to release of defendants on recognizance and to gather information concerning the existence and prior experiences of bail projects around the country. We anticipate operation of a viable program prior to commencement of the farm season in 1970.

We have conversed with Public Defenders both locally and at the state level concerning the feasibility of some type of program. We have not been discouraged. Meanwhile, we have also had conversations with the warden of the Cumberland County Jail. He has been most accomodating to date. He has offered

his cooperation and permits staff members to periodically check the daily record book and card index (containing information on bail, date of commitment, hearings, etc.). Puerto Rican workers are most easily identified by this method, of course, but other farm workers are often identified by trade also. To the extent time permits, we will continue interviewing many of these workers, assisting with bail if possible, and perhaps, as experience has suggested, resolving their cases short of further judicial activity. We are also attempting to secure similar arrangements in both Gloucester and Salem Counties.

INTERDEPARTMENTAL CABINET
COORDINATING COMMITTEE
on
SEASONAL FARM LABOR

Recognizing the State of New Jersey's "responsibilities for programs affecting seasonal farm labor," recognizing that these "responsibilities be discharged and those programs executed in as coordinated a manner as possible," and recognizing that the recent report of the Governor's Task Force on Migrant Labor "indicated the need for further efforts by agencies of this State to improve the lot of the seasonal farm worker," Governor Richard J. Hughes on January 13, 1969, issued Executive Order No. 49 creating an Interdepartmental Cabinet Coordinating Committee on Seasonal Farm Labor.

This Committee, chaired by the Commissioner of Labor and Industry, consists of the Secretary of Agriculture and the Commissioners of Health, Education, Community Affairs and Institutions and Agencies. It is directly responsible to the Governor for "development, implementation and coordination of programs affecting seasonal farm laborers in New Jersey." It is directed

to co-operate and coordinate with appropriate federal, county and local agencies. The Committee is charged with conducting "a review of State law to determine the extent to which existing laws affecting seasonal farm labor are in need of reform." Furthermore, this Committee has "the responsibility of preparing a long-range plan concerning seasonal farm labor in New Jersey." The plan shall be continually updated and reports on progress thereunder forwarded to the Governor at least every six months.

The Farm Worker Division has written to the Commissioner of Community Affairs, requesting a copy of the long-range plan and further progress reports of the Committee. We have also requested the name of the DCA representative to the Committee and anticipate meeting and co-operating with him and the Committee in the near future.

August 20, 1969

Commissioner Paul N. Ylvisaker
Department of Community Affairs
Trenton, New Jersey

Dear Sir:

The following is information concerning the nature and actions of the Cedarville Community Recreation Organization, Inc., in support of our request for funds for our organization.

1. What is the purpose of the group and the specific purpose for which the money will be expended?

The purpose of the group is to establish recreational and educational activities for the young people in the Cedarville Community. This would benefit both the community residents and migrant farm workers especially since there has never been any such establishment in this community before. The recreation center would be used by the entire community, black and white. There are also possibilities that a food cooperative will develop from this same organization.

The purpose of the funds would be to build the recreation center and support it with the essential equipment.

Note: We are currently in danger of being evicted from our present location unless we improve the conditions of the building.

2. Who will be affected by the project for which the money is given? i.e. what part of the community will benefit?

Commissioner Paul W. Elvisaker

August 20, 1969

The entire community will benefit from this project because it will give the migrant workers some definite activities and purposes in the community. We wish to bring the workers to the community instead of continually and traditionally taking our programs to the camps. This is to make these people feel welcome and responsible in this area.

3. What are the proposed hours of operation of the community center?

Monday	9-5 & 7-9	Friday	9-5
Tuesday	9-5 & 7-9	Saturday	9-5
Wednesday	9-5 & 8-10	Sunday	2-5
Thursday	9-5		

4. What is the relationship between CCR0 and SCOPE?

SCOPE assisted in paying the rent for the present building, supplied working materials and equipment such as desks, paper materials, cleaning equipment, electricity etc. SCOPE acts as a parent organization.

5. What are the expenses?

At the present time, CCR0 has the opportunity to purchase one acre of land on the Cedarville-Hillville Road, Cedarville, New Jersey, for approximately \$500. We propose to build a one story community center on this site 35 feet wide by 75 feet long. The center would contain one large meeting and recreation room together with two small offices and two bathrooms.

We estimate that the cost of construction not including labor, which we intend to provide for ourselves under the direction of Rev. Hill an experienced carpenter-builder, will be approximately \$12,000. We also estimate costs of \$2,000 for recreational equipment and \$400

Commissioner Paul N. Ylvisaker

August 20, 1969

for a fence surrounding the site. The center will be operated by members of the organization on a voluntary basis. We estimate that the center can be built by our people within 3-4 months from the date we begin to construct.

This information is supplied for the purpose of providing you with some background concerning the purpose of our group. If we can provide any further information concerning the group and its actions, please don't hesitate to contact us. Thank you very much for your cooperation.

Very truly yours,

Rev. W. J. Hill, President

Willa Mae Thompson, Secretary

REPORT OF THE
YAKIMA VALLEY PROJECT

AND

PROPOSAL FOR
YAKIMA VALLEY LEGAL SERVICES, INC.

CHARLES E. EHLERT

AMERICAN CIVIL LIBERTIES UNION
SMITH TOWER, SEATTLE, WASHINGTON

MARCH, 1969

"The methods of reaching and assisting an unwed mother of four in an urban getto [sic] are not necessarily appropriate for dealing with the Brewster farmer who is trying to support a family of seven on twenty acres and 15 milk cows... The rural indigent...is generally not a threat to the community, and his needs, while just as desperate, are born with stoicism." Bar Association Report, 195

12. LEGAL AID IN THE YAKIMA VALLEY. Despite the frequency and complexity of the legal problems of farm workers, services are not available to them in any degree approaching the need. Although a few exceptional attorneys in the Valley have given free assistance to farm workers, especially in their organizational work, farm workers are essentially priced out of the legal market by the high cost of legal services. As late as 1966, the Yakima County Bar Association operated a legal aid program only one afternoon per week, and some members of the local bar thought the need was being adequately met.

Since then the Yakima County Bar Association has instituted a broader program of legal aid, involving about 86 Upper Valley lawyers who each have legal aid duty for one week. Applicants are screened for eligibility by the Clerk of the Superior Court, in the Courthouse. Individuals are eligible who earn no more than \$30 per week (\$1560 per year), or \$40 per week if married (\$2080 per year), who own no liquid personal assets in excess of \$300, no other personal property worth more than \$500, and no interest in real property worth more than \$5,000. If the applicant is eligible, he is sent to the office of the attorney

on duty that week, who then handles the client's problem without charge.

Lawyers in Sunnyside, in the Lower Valley, operate an informal and occasional legal aid service.

Neither legal aid program has any funds or paid staff, and the lawyers' work is entirely voluntary.

In 1967 the Yakima County Bar Association, at the encouragement of the Y.V.C.C.A., considered organizing an O.E.O. funded legal aid program, and submitted a proposal to the O.E.O. for a "judicare" proposal for Yakima County, which would have provided a federal subsidy for the private lawyers participating in the program. The proposal was not funded by the O.E.O. and the Yakima County Bar Association has not submitted another proposal and has specifically rejected the idea of applying for an O.E.O. funded program with full-time staff lawyers for poor people.

The Washington State Bar Association is also opposed to the establishment of O.E.O. funded legal service programs with full-time staff lawyers.¹⁹⁶ On November 8, 1968, a committee of the State Bar, appointed to study O.E.O. Legal programs and make recommendations, reported to the Board of Governors, recommending the establishment of full-time lawyer programs only in metropolitan areas and judicare programs in rural areas. The Board of Governors then recommended that no new full-time lawyer programs be established, and that judicare programs be established in metropolitan as well as rural areas in the state. The State Bar committee is now preparing an application for a state-wide judicare program.¹⁹⁷

The refusal of the O.E.O. to fund any new judicare programs is well known to the State Bar committee, and it is not clear whether the committee expects the O.E.O. to change its policy, or whether the proposal is more of an effort to record and demonstrate to others the concern of the State Bar Association for meeting its responsibilities to make legal services available to poor people in Washington.

In either case, neither the Yakima County Bar Association nor the Washington State Bar Association has demonstrated that they want poor people to have access to attorneys who will provide them with vigorous, imaginative services, who will challenge the legal status quo, and who will effectively represent and advocate the interests of the poor in the formative processes of the law, in courts, agencies, and legislative bodies. And, if left to either organization, such a program is not likely to be developed.

It has been suggested that judicare systems will not perform well in rural areas because local lawyers with conflicts of interests will not adequately represent the poor, owing to insufficient numbers of attorneys, advanced age of many, dependence on business clients and adverse public reaction.¹⁹⁸

The experience of the Yakima Valley Project tends to confirm this hypothesis. Local attorneys were almost without exception friendly and cordial to our staff. But when it became necessary for me to close the Toppenish office and move back to Seattle and handle cases in the Yakima courts from there, I asked five Yakima Valley attorneys for assistance as co-counsel, espe-

cially to assist with preliminary court appearances, and all five declined on grounds of "conflicts of interest." None of them actually represented any of the adverse parties in any of the cases. The "conflicts" were usually based on their partners' or associates' having wealthy grower clients who would be displeased by the litigation of the particular issues involved.

Despite this reluctance of local lawyers to seek institutional changes, it is fair to say that there are several lawyers in the Valley who work hard for poor clients for inadequate compensation. Yet even they are largely prevented by tradition, economics and the Canons of Ethics from aggressively seeking problems. Because of many factors --- the reservations of the Mexican-Americans, the disengagement of the Indians, the individualism of the Anglos, and even the geography of the Valley --- they will not be able to come close to meeting the need of poor farm workers for legal assistance in even simple and routine civil and criminal matters by operating in offices in Yakima.

13. THE YAKIMA VALLEY PROJECT. In March, 1968, the

United Farm Workers requested the assistance of the American Civil Liberties Union of Washington in organizing a legal assistance program for farm workers in the Yakima Valley. The A.C.L.U. agreed to participate. Lacking funds of its own for the project, its staff attorney, Michael Rosen, organized a program, several hundred law books lent by the University of Washington Law School, a house in Toppenish, in the Lower Valley, lent by the St. Ignatius Catholic Church, borrowed furniture and typewriters, five law students (Jim Marsten, Gerry Bopp, John Goodall, Nick Mathias and Tom Chambers), a secretary, an investigator and field representative, a cook, and two interpreters from the Office of Student Financial Assistance at the University of Washington, a full-time attorney and a total cash budget of about \$6,800, \$2,300 of it donated by individuals in the Seattle area and \$4,500 from a grant from the Episcopal Ministry in New York.

David Laing, the investigator and field representative, was formerly a university English teacher and had previously worked in labor camps and among farm workers in Yakima Valley, Oregon, and Delano. Guadalupe Gamboa, one of the interpreters, had just graduated from the University of Washington with a degree in sociology and is now a first year law student.

The California Rural Legal Assistance program, which has had extensive experience with farm workers' legal problems, lent the Yakima Valley Project one of their staff attorneys, J.V. Henry, for two weeks, to assist in setting up the projects office and enabling the staff to focus more quickly on the special kinds of legal

problems of farm workers.

In addition, seven Washington attorneys each worked in Toppenish for up to a week as volunteers --- Gordon Bovey of Spokane, and Dale Riveland, Stephen Feldman, Peter Paget, Prof. John Junker, John Gant, and Ed Wood of Seattle. By late June the project was in operation. Between mid-July and mid-September when the students returned to school, the project handled about 100 matters, providing some kind of legal service --- advice, representation, research, or negotiation --- for about 100 people. A large portion of the problems involved automobiles --- drunk driving, speeding, negligent and reckless driving, driving without a license, driving while a driver's license was suspended, and financial responsibility law problems. Employment and wage problems were frequent.

The project prepared and distributed several thousand leaflets, about matters affecting farm workers, in English and Spanish, entitled, "Sanitation in Places of Work," "Health Standards for Labor Camps," "Your Rights as a Worker," and "How to Protect Your Welfare Rights." It was observed that wage claims were often difficult to establish because of a lack of adequate written records, and a pocket size booklet was prepared to enable farm workers to keep track of their work. I also spent evenings in the labor camps talking to individuals and groups and showing the film, "Huelga!," about the Delano grape strike.

Besides representing defendants in criminal prosecutions, I initiated a number of law suits, some of them still pending. Several wage claim cases were initiated, one of them brought by four named plaintiffs as a class action on behalf of all employees

of the defendant, for back wages owed, attorneys fees and exemplary damages. The case was settled for the face amount of the unpaid wages claimed by the four workers. In another case,¹⁹⁹ a voting registrar was permanently enjoined from illegally closing registration books. Other litigation still pending is as follows:

²⁰⁰
O'Connor v. Mullins is a mandamus action pending in the Supreme Court of Washington, brought by a woman on welfare against a local justice of the peace, to require him to accept her complaint for replevin of some furniture wrongfully detained by a former landlord, without prepayment of filing fees of \$3.50. Being on welfare, the petitioner receives no allowance for costs of litigation and even if she earned any money, it would be deducted from her welfare grant, resulting in no net increase. The arguments made are that the courts have inherent power to permit litigants to proceed in forma pauperis, even in the absence of an enabling statute, that i.f.p. proceedings are part of the common law adopted in Washington, that the right of a poor person to bring a replevin action without payment of filing fees is guaranteed by the right of petition in the First Amendment, and by the Due Process and the Equal Protection Clauses of the Fourteenth Amendment. The application for mandamus to the Supreme Court was also presented in forma pauperis, without payment of filing fees, and although the Supreme Court has not yet ruled that the petitioner may or may not proceed there i.f.p., the case has been set for argument en banc on March 24, 1969. The case is important to farm workers with wage claims, and if successful, would enable poor

farm workers to obtain judicial determinations of their wage claims without having to pay filing fees, which constitute a deterrent, small as they are.

Mexican-American Federation-Washington State v. Naff ²⁰¹ is

a class action brought by an association of Mexican-Americans and four Mexican-American farm workers and all others similarly situated, against the Yakima County Auditor, several named voting registrars, and all others similarly situated, seeking to require them to register people who read and speak the Spanish language but not the English language, and to enjoin the administration of English literacy tests and to require the appointment of Spanish-speaking registrars. The complaint alleges that the English literacy requirement of Amendment 5 of the Washington Constitution violates the Equal Protection Clause of the Fourteenth Amendment and the Fifteenth Amendment, that the Washington statute authorizing the administration of literacy tests, R.C.W. 29.07.070 (13), is unconstitutional on its face as incapable of equal enforcement, that the registration practices of the registrars violate the Voting Rights Act of 1965, 42 U.S.C. Sec. 1971 (a)(2)(C), and that the Yakima County registrars have engaged in a pattern and practice of discrimination against Mexican-American people. The case is now pending in the United States District Court in Yakima and a three-judge court has been convened to hear and determine it. This case is of significance to Spanish-speaking citizens all over the United States.

Gutierrez v. Riel ²⁰² is a case that arose when a hop grower

hired eight Mexican-Americans to help with the hop harvest, told

them they would be paid \$1.75 an hour and that \$.25 per hour of their wages would be withheld until the harvest was over, to be paid to them then as a "bonus" for finishing the harvest. After they worked about six weeks and had only about a week to go to the end of the harvest, the grower provoked them repeatedly and they left the job, the grower refusing to pay them any of the \$.25 per hour he had withheld. The complaint alleges that the withholding of "bonus" payments was not bargained, was unconscionable, against public policy and illegal. Plaintiffs seek compensatory damages of \$66.63 each, together with double that amount each for exemplary damages, costs and reasonable attorneys' fees. The outcome of this case might have an effect on the institution of the "bonus" system for paying farm workers.

Buttrey v. Housing Authority of Yakima County²⁰³ is a case now pending in the Yakima County Superior Court, brought by a family which formerly lived in the Ahtanum Farm Labor Camp, operated by the Housing Authority, for damages for physical and mental suffering by tenants of the labor camps, for adjudication of the legality of the Housing Authority's leasing of valuable farm land to a private grower, for injunctive relief requiring the Housing Authority to maintain properly the camps or abating them as a public nuisance, for removal of the Commissioners of the Housing Authority, for an accounting from them, and for appointment of a receiver for the Housing Authority to operate it, collect rents, seek out, obtain and use government financing to improve or rebuild the camps.

Finally, the Yakima Valley Project has worked with an ad hoc committee of seven Mexican-Americans in the Lower Valley, three of them selected by the Co-op, three by the Mexican-American Federation and the seventh chosen by the other six, to develop and organize a permanent legal assistance program for farm workers in the Valley, to find funds for it and to operate it. The chairman is Ricardo Garcia of Wapato. Other committee members are Bernie Alvarado of Toppenish, Carmen Perez of Zillah, Juan Arambul of Harrah, Joe Maltos of Sunnyside, Joe Resendez of Granger, and Father Ybarra of Sunnyside (whose alternate is Rev. Fred Lowry, Migrant Minister, of Sunnyside.)

The project has been without funds since October 15. Although the A.C.L.U. has financed continued work on this proposal and the voting case for two months, it has had to borrow money to do so, and its assistance is only temporary. There is an immediate and urgent need for funds with which to continue the work already begun, to have a legal program in existence when the harvest begins in April, to provide support for economic organization and development.

14. RECOMMENDATION. To be concerned with the "legal problems" of farm workers is to be concerned not only with divorces, driving cases, collection cases and personal injuries, as important as they are, but also with the problems often regarded by the rest of society as "social" or "economic" or "political," for which no satisfactory legal solutions have been developed. Yet law, in the sense of legislative, executive and judicial responses to communicated needs, is clearly an important key to making a sound basis for economic and political progress for farm workers.

It is unrealistic to expect that any sustained momentum of such progress in Yakima can be based upon legal services provided by a Bar operated "Judicare" program. Even if participating lawyers were compensated, giving them some incentive to give more than summary treatment to clients' problems, the lawyers would still have "conflicts of interest," they would spend only a small part of their time with farm workers, and there would be little continuity or coordination in their work. Expertise is not likely to develop, nor is it likely that many lawyers, whose careers and practices are dependent upon growers, packers, shippers and their associations, will spend much time designing imaginative and experimental solutions to farm workers' problems, especially when their purpose would be to cause reallocations of farm income. Nor is it likely that lawyers would be willing to risk the displeasure of people controlling the money in Yakima Valley by becoming too closely identified with farm workers.

A permanent legal services office for farm workers' with

a full time staff whose families are not financially dependent on local growers could be expected to identify more with the farm workers, and to represent their individual and common interests more adequately.

The inaccessibility of the law for the poor has been well documented in an urban context.²⁰⁴ In Yakima Valley, for farm workers and especially for migrants, the law is about as remote as it can get, short of legalizing the farm workers' condition of serfdom.

But this remoteness is not solely the product of the high cost of legal services, of hostility to the upward aspirations of the farm workers, or to the congregation of lawyers in office buildings in the City of Yakima, although these are factors. Deeply rooted cultural and language differences between the rich and the poor in Yakima Valley, between lawyers and farm workers, are an important reason for this remoteness. The trip that an agrieved Lower Valley farm worker must make in a battered car to a lawyer's office in the Upper Valley is symbolic of the cultural distance he must travel to participate in the legal system.

The recommendation of this report is that a permanent legal service office for farm workers be established in the Lower Valley with a full time legal staff, and that it be operated by farm workers themselves, through a non-profit corporation, of which the members, officers and directors are farm workers. Three reasons for farm worker control are these:

a. Farm workers will be more responsive to an institution they know is "theirs." Designing a program with farm workers in

control is a means of reducing the cultural remoteness of the legal system.

b. The program will be more responsive to the problems, interests and preferences of farm workers if the broad decisions and guidelines are made by farm workers. In some ways this is the inverse of the present O.E.O. Legal Services model. In those programs, typically, lawyers are in the majority on the board with a few poor people on the board and on an ancillary advisory committee. Theoretically, the lawyers with their framework of legal knowledge make the policy decisions, based on an input of ideas, opinions and preferences from the poor people. In this recommended program, the reverse would be the case. In the making of policy, staff lawyers would provide an "input" of legal judgments, but the decisions would be made by the people who have lived with the problems all their lives and whose interests are at stake. Farm workers on the board of this program could be expected to give an emphasis to the realities of agricultural poverty that lawyers aren't capable of understanding.

Board members, moreover, would be responsible to a constituency - immediately, ^{to} the members of the corporation, and through them, to the larger community of farm workers (who would chose the members), and they could be expected to be responsive to their interests.

In the absence of any objective or analytic way of determining what is the "right" way for such a program to operate --- whether it is better to handle wage claims or voting complaints,

or divorces, or driving cases --- the collective judgment of farm workers who are affected by such decisions is a standard preferable to the collective judgment of either disinterested or well meaning representatives of the middle class. This form of organization is designed to enable the policy alternatives to be more easily communicated to farm workers, and to facilitate the translation of their preferences into action.

Nor should it be assumed that farm workers, being uneducated, will make poor management decisions in the operation of the program. As it has turned out the management of O.E.O. lawyer-controlled programs has been a little ragged. Many lawyers running such programs have no commitment to the achievement of institutional change and are there more to prevent such change from occurring. At best, lawyers involved in these programs know practically nothing about the lives of the poor or the mechanics of cyclical poverty. The control of such a program by even the most conservative and business-minded elements of the bar does not even assure that its fiscal management will be under control. Lawyers, then, are not indispensable to the making of policy or even to sound fiscal control; and the idea that they are is an over-estimation of their abilities and experience.

Farm workers have one important qualification for control that lawyers don't have --- they know what rural poverty is. They can be counted on to know that it isn't necessarily "twenty acres and 15 milk cows."

An ancillary benefit that may be realized is a reinforce-

ment of the interest farm workers take in the program, and a re-direction of their interest to other institutions that affect them. The experience of confronting alternatives, forming an opinion, communicating it, and observing an institutional response to it may serve as an encouragement to farm workers to take an interest in the operations of other institutions,²⁰⁵

c. The exercise of decision-making power can be expected to produce valuable collateral benefits for the farm workers involved. The members of the Board will have to make difficult policy choices. They will have to choose between using the program as an ancillary service for another organization or other organizations or retaining its autonomy as a separately functioning organization with its own policies and perhaps its own strategy for change.

With limited resources, they may have to choose between substantive areas of concern, such as employment, housing, welfare, family, criminal, probate, personal injury, civil rights and other problems. With limited time, they may have to choose between alternative techniques for achieving program goals, such as representation of individuals, groups and associations, various means of community education, development of economic enterprises, test case development and litigation, preparation of proposals for administrative regulations and legislation, and advocacy before agencies and legislative bodies.

For instance, the ability to provide individual clients with legal services would be a valuable organizational asset to the United Farm Workers Cooperative, adding to its prestige and

providing an additional incentive for membership. This usefulness might be exploited by limiting eligibility for individual legal service to members of the Co-op. Yet the provision of full-scale legal services for Co-op members with their individual problems would necessarily limit the ability of the staff to do other things involving more general issues, such as research, planning, preparation and litigation of major test cases.

Thus the Board might be confronted with a choice between spending two hundred hours, roughly ¹⁰5% per cent of its total resource of time, in representing twenty per cent of the Co-op members with legal problems, ²⁰⁶or in attempting to restrain the interstate clearance of work orders and recruitment of Texas farm workers and thereby obtaining pecuniary benefits of perhaps \$45,000 for Yakima Valley farm workers in the form of higher wages. ²⁰⁷

Many questions would be involved in such a decision --- not the least of which would be whether wages would really go up. Farm workers should be as qualified to evaluate that problem as anyone.

The necessity of making choices and developing a rationale for them will tend to develop in Board members both depth of insight and breadth of perspective on the problems of farm labor in Yakima Valley. This in turn can be expected to add substantially to the leadership resources of the Valley and the momentum of change.

The operation of a non-profit legal aid program has long been regarded as a legally permissible corporate activity. ²⁰⁸The

courts, however, have not outlined the permissible boundaries for such programs, and among O.E.O. legal programs, the view prevails that legal service programs should be controlled by lawyers,²⁰⁹ if not by the organized bar itself,²¹⁰ a view which has been taken by one state court before which the question was raised, in Application of Community Action for Legal Services, Inc.²¹¹ In that case the New York Court of Appeals, the state's highest court, denied the application of several lay controlled corporations for certificates of approval for them to provide various legal services for poor people because the corporations were not controlled and supervised by lawyers who are summarily responsible to the courts for the activities of the corporation.

In recent years the United States Supreme Court has decided three cases having to do with the practice of law, issuing opinions that portend considerable changes in the permissible boundaries for the practice of law. The Court has laid down broad constitutional doctrines applicable to the practice of law, which may result in profound institutional changes, especially in respect to the availability of legal services to people with rather limited incomes and means. Beginning in 1963, in N.A.A.C.P. v. Button,²¹² then with Brotherhood of Railroad Trainmen v. Virginia State Bar,²¹³ and most recently with United Mine Workers v. Illinois State Bar Association,²¹⁴ the Supreme Court has ruled that the rights of association and petition for redress of grievances, protected by the First Amendment of the United States Constitution, apply to the practice of law, at least in the situations presented in those cases.

In Button the Court held unconstitutional Virginia statutes enacted in 1956 which prohibited the solicitation or acceptance of legal business through laymen, insofar as those statutes were applied to the work of the N.A.A.C.P., which was the conducting of litigation to desegregate the schools. In Brotherhood the Supreme Court held that a union's practice of recommending a particular attorney to represent union members in their personal injury claims was protected by the First Amendment right of petition. And in 1967, a year after the decision of the New York Court of Appeals in Application of Community Action for Legal Services, the Supreme Court, in United Mine Workers, held that a union's practice of hiring a salaried lawyer to represent union members in their workman's compensation claims was protected from interference by the Illinois State Bar Association by the First Amendment.

The development of new institutional forms and economic relationships to make legal machinery more accessible and responsive to the needs of people without wealth is one of the cutting edges of legal progress. The impact of Button, Brotherhood, and United Mine Workers will be far-reaching. The problems and the opportunities they present are increasingly becoming the concern of the legal profession, and a rationale is developing for an accommodation between them and the traditional standards of legal ethics.²¹⁵

Apparently, a general movement is already beginning among lay groups to establish legal service programs for their members.²¹⁶

But the movement is still in its infancy. This program would be an opportunity not only to provide much needed legal services for people too long neglected, but to see how this new phase of legal organization will work among a group of people just now experiencing the first stirrings of economic and political organization.

Beyond this, it may be possible to develop a means of partially financing the operations of this program with fees collected from people served, agencies or adverse parties.²¹⁷ Although the direct collection of legal fees has not been expressly sanctioned by the U.S. Supreme Court, there are some precedents and reasons to believe the practice may be legally possible. For instance, legal aid organizations have been charging clients small registration fees for years.²¹⁸ Also, the union members in United Mine Workers were supporting their unions with their dues, in effect pre-paying salaried lawyers who handled their problems, a scheme that has also proved rewarding for automobile insurance companies and their retained defense counsel for years. Collection agencies, which receive direct fees in the form of a percentage of funds collected, have operated with the blessings of the courts in Washington since at least 1935.²¹⁹ Finally, there are occasional instances of legal service corporations receiving compensation, either prepaid contract payments, or direct fees, for representing indigent criminal defendants.²²⁰ Attorneys' fees may be recoverable from personal injury actions, welfare hearings, workman's compensation claims, criminal defense work and treble

damage wage claims.

Prepaid medical services in Seattle have survived all efforts of the King County Medical Society to destroy the Group Health Cooperative of Puget Sound.²²¹ And the American Bar Association is even underwriting an experiment in pre-paid legal services, on a referral basis, for union members in Clackamas County,²²² Oregon. Pre-paid or fee generating group legal services may not be long in coming.

Such a program would require substantial preparation and planning, it would probably require prior judicial approval, and it would in any case involve a risk of having to divert substantial staff time from the substantive work of the program. Whether or not to attempt to do this is a decision which should be made, not by me, but by the Board of Trustees of the corporation. It is not mentioned at this point as a recommendation, but as a possibility for future development.

The successful organization of a legal assistance program with control in farm workers would be an innovative achievement for the American Civil Liberties Union of Washington --- which was the first Civil Liberties organization in the United States to depart from the traditional "amicus curiae" role and represent individual clients. It has a direct relation to the implementation of doctrines of the rights of association and petition, the right to counsel, and the equal protection of the laws. It presents a pioneering opportunity to define a new role for the American Civil Liberties Union and to give substance, also, to these civil liberties by the establishment of new institutions as well as new legal precedents.

195. Washington State Bar Association, Report of Special Committee on Legal Assistance Programs (1968).
196. Id.
197. Washington State Bar News, Vol. 22, No. 12, 95, December, 1968. The Committee Report states "This Judicare program is strongly resisted by the Office of Economic Opportunity for three reasons. First, unconvincingly, that the program is more expensive than the 'legal aid' program. Secondly, that from a practical standpoint, attorneys on a judicare system will simply not pursue the test case approach through the appellate process and consequently does not encourage a judicial review of repressive laws. This argument is not historically sound. Thirdly, it does not encourage the establishment of law offices in high poverty areas. It might be observed that judicare operates with a minimum number of 'federal' employees, and does little to swell the ranks of the bureaucracy... The committee suspects that this is a fourth, but unstated reason for OEO's opposition to judicare." Report, supra note 197, at 7. The Bar News article, however, reports that "The Committee has no idea whether it will be granted."
198. Barvick, "Legal Services and the Rural Poor," 15 Kan. L. Rev. 537, 550 (1967).
199. Gamboa v. Naff, No. 51729, Yakima County Superior Court, filed September 7, 1968.
200. No. 40550, Supreme Court of Washington, filed September, 1968.
201. Supra, note 195.
202. No. 51876, Yakima County Superior Court, filed September, 1968.
203. No. 51991, Yakima County Superior Court, filed, December, 1968.
204. See Carlin and Howard, "Legal Representation and Class Justice," 12 U.C.L.A. L.Rev. 381 (1965).
205. Karen James and Lynn Patterson's insight into the "non-assertive nature" of migrants as to decisions of government agencies is to the point. "Perhaps in the end, legality, at least with regard to welfare and health services, is not so important a consideration as the attitude conveyed by welfare and health employees toward the migrant farm worker, which in its impersonal and often harsh delivery, generates an aura of arbitrariness that tends to keep the client in a dependent, unassertive role and reinforces his resentment of authority, law and the middle class." The Endless Cycle, supra note 3, at 95.

206. If ten percent of the present 850 members of the Co-op have one legal problem per year requiring an average of six hours of attorney time, and if the incentive is successful to the extent of increasing membership by the ten percent (all with a legal problem), the program would be committed to the use of about 1020 hours.
207. Hired labor in Yakima County was paid \$22,222,045 in 1964, or about 19% of the total value of all agricultural products sold. The vegetable crop alone sold for \$4,842,080. If the same ratio applied, vegetable workers were paid about \$904,000. If reduction in the supply of labor resulted in only a 5% increase in wages of only the vegetable workers, they would realize an additional \$45,200 --- a return of roughly \$223 per hour of attorneys time. Source of figures, U.S. Bureau of the Census, Census of Agriculture, 1964, supra note 19 at 297.
208. See Azzarello v. Legal Aid Society of Cleveland, 117 Ohio App. 471, 185 N.E. 2d 566 (1962); and Re Opinion of the Justices, 289 Mass. 607, 194 N.E. 313 (1935).
209. See Memorandum by Earl Johnson, former Director, Legal Services Program, Office of Economic Opportunity, Washington, D.C., March 8, 1966, to all regional Legal Services Directors and to headquarters staff, that all L.S.P. funded programs must have a majority of lawyers on their boards, cited in Stumpf, "Law and Poverty: A Political Perspective," 1968 Wis. L. Rev. 694, 709, n. 57 (1968).
210. See "Competition in Legal Services Under the War on Poverty," 19 Stan.L.Rev. 579 (1957); and Resolution of the House of Delegates of the American Bar Association, February 8, 1965, pledging cooperation with O.E.O. limited to "programs /that/ utilize to the maximum extent deemed feasible the experience and facilities of the organized Bar, such as Legal Aid," reported at 51 A.B.A.J. 551 (1965) and quoted in 19 Stan.L.Rev. 579.
211. 274 N.E. 2d 779, 26 A.D. 2d 354 (1966).
212. 371 U.S. 415 (1963).
213. 377 U.S. 1 (1964).
214. 389 U.S. 217 (1967).
215. See Schwartz, "Changing Patterns of Legal Services," in Law in a Changing America, Hazard ed., Prentice Hall, Inc., Englewood Cliffs, N.J., 1968; Copaken, "Group Legal Services for Trade Associations," 66 Mich. L. Rev. 1211

(1968); Zimroth, "Group Legal Services and the Constitution," 76 Yale L.J. 966 (1967); Note, "Ethical Problems Raised by the Neighborhood Law Office," 41 Notre Dame Lawyer 961 (1966); "The Availability of Counsel and Group Legal Services: A Symposium," 12 U.C.L.A. L. Rev. No. 2 (1965).

216. See American Bar News, Vol. 13, No. 11, p. 6, November, 1968.
217. This was suggested to the writer by Tomas Villaneuva, Manager of the United Farm Workers Cooperative in Toppenish, Washington, in July, 1968.
218. See Azzarello v. Legal Aid Society of Cleveland, *supra* note 208.
219. Washington State Bar Association v. Merchants Rating and Adjustment Co., 183 Wash. 611, 49 P.2d 26 (1935).
220. See e.g. United States V. Reed, (N.D. Cal. 1967) No. 40680, in which the Court awarded payment of \$1300 in legal fees to San Francisco Legal Aid Society for handling complex criminal defense.
221. See Group Health Cooperative of Puget Sound v. King County Medical Society, 39 Wn. 2d 586, 237 P.2d 737 (1951).
222. See American Bar News, Vol. 13, No. 11, p. 1, November, 1968.



STRANGER IN ONE'S LAND

U.S. Commission on
Civil Rights
Clearinghouse
Publication No. 19
May 1970

(1829)

U.S. Commission on Civil Rights

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 and directed to:

Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, or national origin, or by reason of fraudulent practices;

Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution;

Appraise Federal laws and policies with respect to equal protection of the laws;

Serve as a national clearinghouse for information in respect to denials of equal protection of the laws; and

Submit reports, findings, and recommendations to the President and the Congress.

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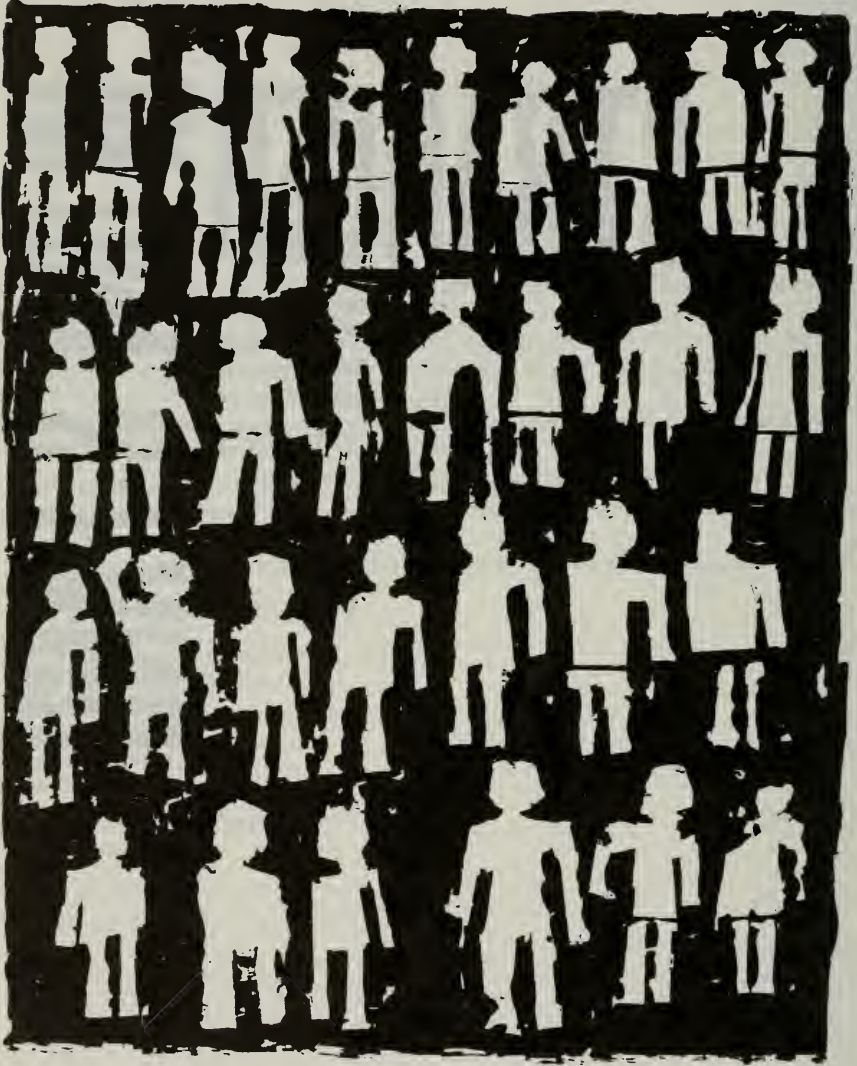
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PREFACE



The predicament of a people who are historically part of the Southwest yet paradoxically treated as strangers in their own land was the focus of the hearing the U.S. Commission on Civil Rights held in San Antonio, Texas, in December 1968.

For the first time, in a public setting, the Mexican American community's problems in civil rights were the central topic of a Commission hearing. It was not, however, the first time that Mexican American needs and aspirations in the field of equal opportunity and civil rights had been considered by the Commission. At previous hearings in Phoenix, Los Angeles, and San Francisco, Mexican American spokesmen had presented some of the issues and demands of the Spanish-speaking community. State Advisory Committees in the five Southwestern States of Arizona, California, Colorado, New Mexico, and Texas, had addressed themselves to problems concerning the Mexican American people, and occasionally had issued reports of their findings.

But the San Antonio hearing concentrated for the first time the Commission's full attention and resources. Texas, where no hearing had been held before by the Commission and with the second largest Spanish surname population, and San Antonio, the Texas city with the largest Mexican American community, offered a logical site for the weeklong hearing of December 9-14.

For nearly 6 months prior to the hearing, staff members delved into the conditions of life and work among Mexican Americans filtering out the issues related to civil rights and laying the groundwork for the hearing. A field representative was assigned to San Antonio for coordination of onsite activities.

Some 1,000 persons were interviewed; volumes of data were collected and analyzed; nearly 80 persons in all were requested to speak under subpoena—from barrio residents to State officials, businessmen to farm workers, students to school superintendents. Clergymen, law enforcement officials, and three families also testified.

The hearing explored major areas of concern to Mexican Americans and the Commission: employment, education, and the administration of justice. Problems in housing and political representation were also considered. The total picture of economic deprivation, of relegation to the meanest employment, of educational suppression, and of restricted opportunity in almost every phase of life unfolded.

Expressing great empathy with the story that developed was a predominantly Mexican American audience that daily filled the auditorium at Our Lady of the Lake College where the hearing was conducted.

What follows is an account of the Commission's hearing by Rubén Salazar, a California journalist. Salazar is currently news director for the Spanish-language television station KMEX of Los Angeles. He also writes a column for the Los Angeles Times on the problems of the Spanish-speaking people of the United States. He has been a foreign correspondent in Vietnam, in the Dominican Republic, and in Mexico City. His views do not necessarily represent those of the Commission. The report is published for the purpose of stimulating public interest and concern in the problems confronting Mexican Americans.

CONTENTS

	Page
Introduction.....	1
Aquí No Se Habla Español.....	4
La Frontera.....	11
Los Pobres.....	16
La Educación de Mexicanos.....	23
No Hay Trabajo.....	30
La Ley.....	38
Conclusion.....	46



INTRODUCTION

The San Antonio hearing of the U.S. Commission on Civil Rights which probed into the social anguish of Mexican Americans was born in protest and began in controversy.

As the country's second largest minority, Mexican Americans had been virtually ignored by public and private reformers. There was vague realization that they had educational, employment, and cultural problems. But it was felt that language was the basic reason for these problems. And, it was concluded, once this accident of birth was repaired, Mexican Americans would melt into the Caucasian pot, just as Italians, Germans, and Poles had.

Then came the black revolution.

It exploded partly from a condition which had been known all along but was now the basis for a black-white confrontation: the color of one's skin was all too important in America. White was good. Black was bad.

Faced with an identity crisis, many young Mexican Americans—excited by black militancy—decided that they had been misled by their elders into apathetic confusion. It came as a shock at first: Mexican Americans felt caught between the white and the black. Though counted as "white" by the Bureau of the Census, Mexican Americans were never really thought of as such. Though the speaking of foreign languages was considered highly sophisticated, Mexican Americans were condemned for speaking Spanish.

The ambivalence felt vaguely and in silence for so long seemed to crystalize in the light of the black revolution. A Mexican American was neither Mexican nor American. He was neither white nor black. What was he then and where was he going? The young, the militant, and the angry wanted to know.

When the Commission met in San Francisco in May 1967, Mexican Americans walked out protesting there was not a Mexican American Commissioner to represent them or enough attention accorded their problems.

In October of that year, the U.S. Inter-Agency Committee on Mexican American Affairs held a hearing in El Paso on the problems of the Spanish-speaking. The hearing, conducted at the same time President Johnson officially returned to Mexico a disputed piece of border land [El Chamizal], ended on a sour note.

Governor John Connally of Texas, accused of allowing the use of Texas Rangers to break strikes by Mexican American farm workers in the Rio Grande Valley, was roundly booed and hooted by Mexican Americans in the presence of President Johnson. Because the President was there, the incident was given wide publicity and it marked a rare national exposure of rising Mexican American militancy.

In other areas of the Southwest, the strike-boycott of California table grapes led by Cesar Chavez was becoming a national and international cause. Reies Lopez Tijerina's land grants struggle in New Mexico and its adversaries introduced violence to the movement. There were the high school walkouts in East Los Angeles by Mexican American students, and Rodolfo (Corky) Gonzales, head of the Denver-based Crusade for Justice, was preaching ethnic nationalism. Many Mexican Americans joined the Poor People's Campaign in Washington, D.C. in the summer of 1968.

For the first time, many Americans became aware of Mexican American discontent. There was talk now of brown power.

In November 1968, President Johnson named the first Mexican American to the Commission, Dr. Hector P. Garcia, a physician from

Corpus Christi, Texas, and founder of the American G.I. Forum. A Commission hearing which would center on Mexican American problems was scheduled for December 9-14, in San Antonio.

Protests helped bring it about. Now the controversy would begin.

Some Mexican American leaders charged that Washington was meddling in something it knew nothing about and so would make things worse instead of better. They felt any problems Mexican Americans might have should be solved locally, by local leadership. The younger and the more militant Chicano leadership retorted that the problems had intentionally been ignored and that national exposure would bring new, more imaginative solutions. Traditional leadership, they claimed, had failed.

These strong points of view, aired publicly before the Commission met, hint at the diversity of thought and feeling found among the some six to seven million Mexican Americans, most of whom live in California, Texas, New Mexico, Arizona, and Colorado.

There are many splits in the black movement. But there's something the American Negro knows for sure—he's black. He can easily define his problems as a race which make him part of a cohesive force. This is what has forged the beginning of black power in the United States. As yet, most Mexican Americans seem not to identify with any one single overriding problem as Americans. Though they know they're somehow different, many still cling to the idea that Mexican Americans are Caucasian, thus white, thus "one of the boys".

Many prove it: by looking and living like white Americans, by obtaining and keeping good jobs and by intermarrying with Anglos who rarely think of it as a "mixed marriage," to these people, Mexican Americans are assimilating well into white American society. They felt uncomfortable about the Commission's hearing because in their eyes it would merely tend to continue the polarization of Anglos and Mexican Americans at a time in which they felt it was disappearing.

To many other Mexican Americans, especially the young activists, Mexican Americans have for too long been cheated by tacitly agreeing to be Caucasian in name only. They say they would rather be proud of their Indian blood than uncertain about their Caucasian status. They feel they can achieve greater dignity by identifying with pre-Anglo Mexican Indian civilizations and even the Conquistadores than by pretending that they can truly relate to the *Mayflower* and early New England Puritanism.

This division of feeling will continue and perhaps widen. The hearing, however, clearly showed that people who are indigenous to the Southwest seem sometimes strangers in their own land and certainly in many ways curiously alienated from their fellow Americans.

1 AQUÍ NO SE HABLA

You know it almost from the beginning: speaking Spanish makes you different. Your mother, father, brothers, sisters, and friends all speak Spanish. But the bus driver, the teacher, the policeman, the store clerk, the man who comes to collect the rent—all the people who are doing important things—do not. Then the day comes when your teacher—who has taught you the importance of many things—tells you that speaking Spanish is wrong. You go home, kiss your mother, and say a few words to her in Spanish. You go to the window and look out and your mother asks you what's the matter?

Nada, mama, you answer, because you don't know what is wrong. . . .

Howard A. Glickstein, then Acting Staff Director of the Commission asked witness Edgar Lozano, a San Antonio high school student, whether he has ever been punished for speaking Spanish at school. Yes, in grammar, in junior high, and in senior high schools, he answers.

" . . . they took a stick to me," says Edgar. "It really stayed in your mind. Some things, they don't go away as easy as others."

Edgar relates with some bitterness and anger the times he was beaten by teachers for speaking Spanish at school after "getting a lecture about, if you want to be an American, you have got to speak English."

Glickstein tries to ask Edgar another question and the boy, this time more sad than angry, interrupts and says:

"I mean, how would you like for somebody to come up to you and tell you what you speak is a dirty language? You know, what your mother speaks is a dirty language. You know, that is the only thing I ever heard at home.

ESPAÑOL



"A teacher comes up to you and tells you, 'No, no. You know that is a filthy language, nothing but bad words and bad thoughts in that language.'

"I mean, they are telling you that your language is bad. . . . Your mother and father speak a bad language, you speak a bad language. I mean you communicate with dirty words, and nasty ideas.

". . . that really stuck to my mind."

Edgar, like many Mexican Americans before him, had been scarred with the insults of an Anglo world which rejects everything except carbon copies of what it has decreed to be "American." You start being different and you end up being labeled as un-American. An Anglo-oriented school in a Mexican American barrio can do things to the teachers, too. Bad communication can sorely twist the always sensitive relation between teacher and pupil.

Under questioning from David Rubin, the Commission's Acting General Counsel, W. Dain Higdon, principal of San Antonio's Hawthorne Junior High School, 65 percent Mexican American, asserted that he felt there was something in the background or characteristics of the Mexican Americans which inhibits high achievement.

Mexicans or Mexican Americans, Higdon told the Commission, have a "philosophical concept" in dealing with life which says *lo que dios quiera*, "what God wishes."

An Anglo, on the other hand, Higdon continued, says "in God we trust," not "this is how it shall be and you are limited."

". . . you have unlimited horizons," Higdon explained to the Commission. "And whenever some situation befalls me [as an Anglo], I say it is my fault. Whenever some situation befalls a Mexican American, he may say it is his fault, but more generally and from a heritage standpoint he would be inclined to say, *lo que dios quiera*."

Rubin: Would it be fair to say that you feel there are genetic factors involved which account for the differences in achievements, that mixture of genes causes differences in people?

Higdon: Well, when you were in my office, I made that statement to you and I will stick by it. . . .

The Mexican American child learns early that he is different. Then he learns that speaking Spanish prevents his becoming a good American. It's at this time, perhaps, when he most needs sensitive guidance. Yet, how do some teachers see the role of their profession?

Rubin: Did you state in an interview with me and with another staff member that the obligations of the teacher were first to complete paperwork and secondly to maintain discipline?

Higdon: Yes, sir, I did.

Rubin: And thirdly, to teach?

Higdon: Yes, sir.

What can a school, in which teacher and student speak not only different languages but are also on different emotional wave lengths, do to a Mexican American child?

This kind of school, Dr. Jack Forbes of Berkeley's Far West Laboratory for Educational Research and Development, told the Commission:

"Tends to lead to a great deal of alienation, a great deal of hostility, it tends to lead also to a great deal of confusion, where the child comes out of that school really not knowing who he is, not knowing what he should be proud of, not knowing what language he should speak other than English, being in doubt as to whether he should completely accept what Anglo people have been telling him and forget his Mexican identity, or whether he should listen to what his parents and perhaps other people have said and be proud of his Mexican identity."

The word "Mexican" has been and still is in many places in the Southwest a word of contempt. Mexican Americans refer to themselves as Mexicanos or Chicanos with the ease of those who know and understand each other. But when some Anglos talk about "Mexicans" the word takes on a new meaning, almost the counterpart of "nigger."

The Mexican Americans' insistence on keeping the Spanish language is but one aspect of cultural differences between Anglos and Mexican Americans.

Values differ between these two groups for a variety of historical reasons. Mexicans have deep rural roots which have produced a sense of isolation. Spanish Catholicism has given Mexicans an attitude of fatalism and resignation. Family ties are extremely important and time, or clock-watching, is not.

Luis F. Hernandez, assistant professor of education at San Fernando Valley State College in Los Angeles, has described the differences this way:

"Mexican American values can be said to be directed toward tradition, fatalism, resignation, strong family ties, a high regard for authority, paternalism, personal relations, reluctance to change, a greater orientation to the present than to the future and a greater concern for being than doing.

"The contrasting Anglo-American values can be said to be directed toward change, achievement, impersonal relations, efficiency, progress, equality, scientific rationalization, democracy, individual action and reaction, and a greater concern for doing than being."

Distortion of or deletion of Mexicans' contribution to the Southwest in history books can inhibit a Mexican American child from the beginning of his schooling.

State Senator Joe Bernal of Texas told the Commission that the "schools have not given us any reason to be proud" of being Mexican Americans. People running the schools "have tried to take away our language," the senator continued, and so Mexican American children very early are made to feel ashamed of the Spanish language and of being Mexican.

The children start building up defenses such as insisting on being called "Latin" or "Hispano" or "Spanish American" because, said Bernal, "they want no reference made to being Mexican." One of the

reasons for this, Bernal told the Commission, is that "it has been inculcated" in the minds of grammar school children that the Mexican "is no good" by means of, for instance, overly and distortedly emphasizing the Battle of the Alamo and ignoring all contributions made by Mexicans in the Southwest.

To be Spanish, of course, is something else. Spanish has a European connotation and Europe is the motherland.

Carey McWilliams in his "North From Mexico" explains that "the Hispanic heritage of the Southwest has two parts: the Spanish and the Mexican-Indian. Originally one heritage, unified in time, they have long since been polarized. Carefully distinguished from the Mexican, the Spanish heritage is now enshrined throughout the Southwest. It has become the sacred or templar tradition of which the Mexican-Indian inheritance is the secular or profane counterpart"

Dr. Forbes noticed on his arrival in San Antonio for the hearing that things have not changed.

". . . the San Antonio greeter magazine which I picked up in a hotel lobby and which had the statement about the history of San Antonio said nothing about the Mexican heritage of this region, talking only about the glorious Spanish colonial era and things of this nature. . . ."

To be Spanish is fine because white is important and Spain is white.

Dr. Forbes reminded the Commission that "first of all, the Mexican American population is in great part a native population in the Southwest. It is not an immigrant population. Now this nativity in the Southwest stems not only from the pre-1848 period during the so-called Spanish colonial and Mexican periods, but it also stems from the fact that many people who today identify as Mexican Americans or in some areas as Hispanos, are actually of local Indian descent. . . ."

Aurelio Manuel Montemayor, who taught in San Felipe High School at Del Rio, Texas, explained to the Commission how in his view all this is ignored in the school curriculum.

Quoting from a State-approved textbook, Montemayor said the book related how "the first comers to America were mainly Anglo-Saxons but soon came Dutchmen, Swedes, Germans, Frenchmen, Africans, then the great 19th century period of immigration added to our already melting pot. Then later on, it [the textbook] said, the Spaniards came."

"So my students," continued Montemayor, "had no idea where they came from" and wondered whether "they were part of American society." This frustrated Montemayor so much, he said, that he told his students "let's see if we can write our own textbook." He instructed them to write papers on the subject, "Who Am I?"

"They told me in their words," Montemayor said, "that they were inferior to the standards of this country. That no matter how much they tried they could never be blonds and blue-eyed."

San Felipe High School is located in the San Felipe Independent School District of the city of Del Rio which also contains the Del Rio Independent School District. San Felipe High School has about 97 percent Mexican Americans and the Del Rio High School has about 50 percent Anglos and 49 percent Mexican Americans. Though the Laughlin Air Force Base is located in the San Felipe Independent School District, the base children are bused to the more affluent and less Mexican American Del Rio High School.

Some of Montemayor's students, prompted by the teacher's concern with self-identity, decided to work on a project called: Does San Felipe Have an Inferiority Complex?

"They studied the schools, they studied the discontent in the San Felipe Community," Montemayor told the Commission. A boy and a girl interviewed parents at the air base and asked them what they thought of the San Felipe schools and whether they would allow their children to attend there.

The boy and girl told Montemayor that base officials had them escorted to the gate when they discovered what they were doing. But not before a base mother told the young pollsters what she thought of San Felipe.

Montemayor: . . . [a woman told my students] that she wouldn't send her children to [San Felipe] district schools. They had them there for a semester, the neighborhoods were so dirty and all of that, and that the schools were falling down. And, of course, the students were finding it out on their own and, of course, as far as morale, it couldn't have been lower.

Many Mexican American youths, despite their low morale, continue on their business as best they can even though lamenting, as some of Montemayor's students, that no matter how much they try they will never be blond and blue-eyed.

Others become ultramilitant as did David Sanchez, prime minister of the Brown Berets in Los Angeles, who told a newsman: "There are very few gabachos [Anglos] who don't turn me off. To the Anglo, justice means 'just us'."

And many others, as did some 1,500 Mexican Americans from throughout the Southwest who last March attended a "Chicano Youth Liberation Conference" in Denver, will adopt, in their anger, frustration, and disillusion, a resolution which condemns the "brutal gringo invasion of our territories".



2

LA FRONTERA

The marchers, followers of farm labor leader Cesar Chavez, finished their 100-mile trek across the blazing hot desert from Indio, California, to the border town of Calexico on Sunday, May 18, 1969. According to the plan, Chavez' people were supposed to hold a solidarity rally with Mexican national farm workers at the international line. But the rally never took place.

The official explanation was that the Mexican Government did not want its people to get involved in an American labor dispute, the California table grape strike-boycott. Actually, the Mexican workers who live in Mexico's border towns and work in American borderland farms and in American border cities are very much involved in a unique American labor controversy. As commuters, the Mexican workers are the unwitting pawns of an international labor dispute without precedence. The 1,800-mile United States-Mexico border stretches from the coast of California to the Gulf of Mexico in an irregular line which orators like to describe as the only such unfortified frontier in the world. This does not mean that "armies" do not crisscross this border every day.

Perhaps the most telling contrast between the two countries is that while an army of fun-seeking American tourists crosses the border into Mexico, another army of job-hungry Mexicans crosses the line into the United States.

The American tourists, for the most part, have a good effect on the Mexican economy and this army is welcomed with good will. The army

of job-hungry Mexicans which commutes across the international line has an adverse effect on American labor. For many years this was passively taken for granted. But now, in the age of activism, a confrontation seems inevitable.

The situation is a highly complicated and sensitive one because it involves mostly Mexicans against Mexican Americans. That is, the poorest of the poor Mexican nationals vying for jobs with Mexican Americans who are striving to attain U.S. economic standards. Result: Mexican nationals, because they're understandably willing to work for less, take jobs away from Mexican Americans.

Even in their resentment, Mexican Americans find it difficult to condemn these commuters. They, their parents, or grandparents were in the same boat not too long ago. The fact remains that Mexicans are pitted against Mexican Americans for the lowest paid jobs in America.

The problem is further complicated by the fact that U.S. borderland businessmen fear that any effort to terminate the commuter program would result in a retaliatory refusal by Mexico to allow its citizens to carry on their extensive trade in American border towns.

(Cheap labor on the Mexican side of the border attracts industrialists as much as it does growers. A free industrial zone program in Mexican border towns was started in 1965, whereby American industrialists can set up factories there under a special program which exempts them from all import duties. Mexican workers reportedly earn as little as \$2 a day in these American factories. The American labor movement, which helped kill the bracero [Mexican farm labor] program, claims that in effect under this new plan—since braceros are no longer available in the United States—the work is now being taken to the braceros.)

Former Secretary of State, Dean Rusk, in commenting on a court suit concerning the commuter problem, voiced his concern over United States-Mexico diplomatic relations should the commuter system be stopped.

"[If] as a result of a substantial reduction in the commuter traffic across the border between Mexico and the United States, a significant number of Mexican nationals would be deprived of their earning power, the trade between the two countries would be substantially reduced," the Secretary said. "We would expect that this would have an immediate depressing effect on the economy of the region on both sides of the border. Moreover, the loss of gainful employment and dollar earnings by 30,000 to 50,000 Mexican nationals, estimated at over \$50 million annually, might compel the Government of Mexico to consider compensating steps, which would further damage the economic life of the region."

This led a Commission staff report to conclude that:

"The Mexican American in the border area is thus charged with the responsibility of protecting our diplomatic relations. The economic

burdens involved in this charge, he may justifiably feel, should be borne by the Nation as a whole, not thrust upon a minority of its citizens."

The Commission staff report notes that: "The commuter system has deep roots. People have commuted to work across the United States-Mexico border since the border's inception. Up until the 1920's this traffic was unrestricted."

Since then, the law has been changed so that a Mexican national wishing to cross the border to work in the United States must obtain immigrant status. When he does, he is issued an alien registration card and in the vernacular of those concerned with the problem becomes a "green carder" after the color of the card.

There is nothing in the law which says the green carder, though technically an immigrant, must live in the United States. Because the green carder usually performs agricultural work in the U.S. borderlands or menial jobs in the U.S. border cities, he prefers to live on the Mexican side to save money.

The result is that these commuters, not really immigrants at all, use their green card merely as a working pass which permits them to cross the border. Basically then, the traffic of commuters is almost as unrestricted as it was in the twenties. But more to the point, as long as the Mexican commuter can live on the Mexican side he can afford to work for less than his Mexican American brother. (The Mexican American, of course, must also compete against the Mexican worker who crosses the border illegally.)

The commuter system will be much harder to abolish than the bracero program which, until its demise, was another burden on the backs of the Mexican American farm and unskilled workers.

The bracero program, initiated during World War II when farm labor was genuinely scarce, was a formal program whereby two Governments, the United States and Mexico, made an agreement to bring Mexican farm laborers [braceros] to the United States until American farm workers were again available. Though farm workers feel the bracero program lasted too long after the war, the program was successfully phased out when unemployed farm workers in the United States were able to convince authorities that such an agreement between the two countries was having an adverse effect on them. The green card commuter, on the other hand, is a bracero, who, it might be said, made his contract individually with the U.S. Government by becoming an "immigrant" in name if not in fact.

Unlike the bracero, who came here under a special temporary arrangement, a commuter as an "immigrant" has virtually a permanent status, even though he has no intention of living permanently in the United States—as does the genuine immigrant.

One of the ideas behind the march to Calxico was to recruit commuters for Chavez' union. Commuters, as the Commission report shows.

have been used as strike-breakers notably in farm labor disputes in Delano, California, and in Starr County, Texas.

Knowing that commuters are forced by poverty to be commuters, the union knew the system would continue. So Chavez extended an invitation to join the union so that commuters would not work for less than Mexican Americans along the border. Though it looks like a simple solution, it must be seen from the context of a rich economy [the United States] living next door to a poor one [Mexico].

To the Mexican commuter, joining the union is not as attractive as it looks on the surface. For one thing, he knows that besides his labor, it's his docility which the employer appreciates, and he is aware that joining the union will only alienate him from his employer. He also reasons that if he joins the union, then it will be of little value for the employer to hire him [a unionized commuter] when he can hire local unionized workers, both of whom he would have to pay the same amount.

Domingo Arredondo, strike chairman of the United Farm Workers Organizing Committee, who participated in the labor dispute at Starr County, discussed his attempt to recruit commuters in testimony before the Senate Subcommittee on Migratory Farm Workers.

"The problem about these green carders is that they come to work from Mexico every day. They will come in the morning and they will go back at night."

After claiming that growers had raised the pay of commuters so they would not join the union, Arredondo testified that "we went and talked to these people [commuters] at the bridge, international bridge. We told them to cooperate with us for better wages and working conditions, but they always say that . . . they would sign but they would probably get laid off their jobs. So, really we couldn't get nowhere convincing them that a union is something that a worker needs."

As the Commission's staff report points out, there is also, but to a smaller extent, commuter traffic across the American-Canadian border. However, the report continues, "Canadian commuters do not depress local economic conditions, as do Mexican commuters, because they live in a substantially identical cost-of-living economy, work in highly unionized occupations, and are highly unionized themselves. Being well assimilated into the labor force, they offer no undue competition to American labor."

The Commission staff report notes that "there is wide disagreement about the actual extent of the commuter traffic. An Immigration and Naturalization Service survey on January 11 and 17, 1966, counted a total of 43,687 commuters. The United Farm Workers Organizing Committee, AFL-CIO, on the other hand, has estimated the number to be closer to 150,000. While the former estimate includes only daily commuters working along the border, the latter includes aliens remain-

ing here for periods of weeks or months, usually working in areas farther north."

Because the people involved in this commuter controversy are used to dealing with each other on a friendly basis for generations, and think of the border as an artificial line drawn by latecomers, the issue is one not only of great economic import but also of cultural significance.

Between the two countries, writes J. Fred Rippy in his "The United States and Mexico," "there have been no natural barriers, the two nations being separated by an imaginary line, a barbed wire fence, an easily forded river, an undergrowth of mesquite or chaparral. Citizens of both nations have passed back and forth with little difficulty or interruption, or have settled in neighboring states amidst natural surroundings which have not repelled them by their unfamiliar aspects. . . ."

There's only one catch. On one side of the border, or *frontera*, is a rich Nation with the highest standard of living in history. On the other side is a poor Nation with a seemingly inexhaustible supply of cheap labor.

"The Mexican aliens, as a group, are a readily available, low-wage work force which undermines the standards American workers generally enjoy throughout the rest of the country," said the 1968 Report of the Senate Migratory Labor Subcommittee. "More importantly, the normal play of free enterprise principles is subverted and prevented from operating to develop standards along the border commensurate with the American standards. So long as Mexican aliens are allowed indiscriminately to work in the American economy, and take their wages back to the low-cost Mexican economy, the growth of the American standards will continue to be stultified."

Senator Edward M. Kennedy of Massachusetts, speaking on a proposed amendment to the Immigration and Nationality Act, said:

"In El Paso [an urban Texas city], where unemployment is currently some 35 percent greater than the State average, the estimated number of commuters in 1966 was more than double the number of unemployed. In El Centro, California, [a rural area city], where the unemployment rate is currently 13.1 percent, the estimated number of commuters in 1966 was nearly double the number of unemployed."

When talking about themselves or about each other, Mexicans and Mexican Americans refer to themselves simply as "Mexicanos." The commuter problem is beginning to cut a wedge into this traditional term. When poor Mexican Americans have to compete for low-paying jobs against very poor Mexican nationals only the poor suffer. But resentment builds up between the poor and the very poor.

And when that happens, the border becomes a real dividing line.



3 LOS POBRES

For the Mexican American in the Southwest, poverty is often experienced part of the time in the city and the rest of the year in the country. But no matter where he might be living at the moment, Mexico and its poverty hover over him like an ominous cloud.

The closer the Mexican American is to the border, the lower his wages are—whether in the field or in the city.

Sometimes it's just a matter of a few miles.

Luis Chavez, 55, a father of nine children, who lives near Edinburg, Texas, in the border county of Hidalgo, explained this phenomenon under questioning from Cruz Reynoso, special legal consultant to the Commission.

Reynoso: Now tell me, during the time that you are in the south of Texas, approximately how much do you earn in your work as an agricultural worker?

Chavez: There are times, let's speak of certain areas, if from where I live going North, for instance, up to about 15 miles, they pay \$1.15 an hour. In other places in the other direction, say, going South [toward the border] . . . they pay \$1 an hour . . . There are other areas [closer to the border] where they are paying less than a dollar.

But traveling 15 miles north from his Rio Grande Valley is not enough for Chavez to make ends meet. It is not far enough from the border and the cheap labor offered by his Mexican brothers across the line.

So Chavez must go part of the year to the most un-Mexican of places, Michigan.

"Due to the lack of sufficient economic development and the declining state of agriculture . . . poverty is most acutely felt in the fields of the Rio Grande Valley," the social action department of the Texas Catholic Conference told the Senate Subcommittee on Migratory Labor. "The overwhelming majority of hired farm workers in this State are Mexican American. Because of the lack of opportunities in this area, 88,700 Texas farm workers (not including their families) are forced to migrate from their homes every year in search of employment. Unfortunately, because of the vast supply of 'green carders', that is, people who have been granted immigrant status but who live in Mexico and work in the United States, the domestic workers are unable to compete with the depressed wages that result from the availability of cheap labor to the growers. This accounts for the fact that almost one-half of the Texas migrant workers come from the four counties of the Lower Rio Grande Valley."

Chavez, who told the Commission he went to school only 1 day in his whole life and speaks no English, wants a better life for his nine children. At the time he testified, he, his wife Olivia, and their children, lived in a two-bedroom shack near Edcouch, Texas.

Turning to Mrs. Chavez, Reynoso asked how a couple with nine children can live in a two-bedroom house.

Mrs. Chavez: Well, in the children's room there is four sleeping there and in our room five girls sleep together with us.

Chavez explained that some of his neighbors in his barrio have better houses than his because some families sacrifice the schooling of their children for material benefits.

Chavez: . . . As far as I am concerned, the little that I have been able to get, to earn in one place or another, outside even the State of Texas, has been with the purpose of giving an education to my children.

After explaining that work is hard to get in the summer in the Rio Grande Valley, Chavez told the Commission he migrated about the second week in July.

Reynoso: Why did you wait until then?

Chavez: We wanted to wait for the children to finish school. . . .

Though work was relatively good in the North, Chavez continued, he sent his two older sons back to Texas in time for the beginning of school even though "the rest of the family, the small ones, we remained in order to work a little longer."

Living conditions for the Chavezes while migrating to the North are even worse than at home in Texas, Mrs. Chavez' testimony to the Commission showed. While traveling, everyone from 8 years on up works and the Chavez family usually lives in a one-room shack in labor camps, where, according to Mrs. Chavez, it is not unusual to have only one bathroom for 200 to 250 people.

Describing how the family lives in a one-room shack while migrating, Chavez told the Commission:

" . . . you put some partitions and you put some cots on one side and some cots on this side and then you cook your meals on the edge where the door is, that is where the small kitchen is. And on the table we put a hot plate on top of that."

Reynoso: And the whole family lives there?

Chavez: Yes, we have to manage . . . the ceiling isn't high enough to put three cots on the top of each other, so we put cots on one side and two on the other side and two here, and two across and two criss-crossed, we sort of complete the entire family.

And how much does the Chavez family of 11 earn while migrating for about 4 months out of the year?

Chavez: Approximately when we come back home . . . the most we are able to keep [after expenses on the road] is about \$1,200 to \$1,300 free when we come back home.

Reynoso: And during the time, all told, how much did you earn approximately?

Chavez: Between \$2,500, thereabouts . . . this is the entire family that makes those earnings, those earnings are for the entire family.

Reynoso asked one of Chavez' sons, José, 19, whether counselors at his school in Texas, which is about 90 percent Mexican American, encourage students to continue their schooling.

José: Most of the time when a student has a problem in school, he tried to go to the counselor, but she always tells you that she is too busy, she will get back to you later. Instead of going back again you just stay with it. . . .

Reynoso: How many counselors do you have at this school?

José: One.

Reynoso: How many students are there?

José: About 1,100.

Reynoso: Has there been some concern with respect to getting advice as to going to college and that sort of thing in addition to plain counseling at the high school?

José: Most of the time students that I have talked with say that the teacher says the opportunities are there to go to college which she doesn't talk about it too much to us.

Reynoso: So the young people in high school don't know anything about the opportunities?

José: Most of them don't.

Reynoso: Do you yourself hope to go on with your education if you make it through high school okay?

José: Yes, I do. . . . I would like to be a mathematics teacher.

Like the Chavezes, Jesus Garcia, 36, his wife Manuela, and their 13 children live their poverty both in the country and in the city. The difference is that Garcia lives, when not migrating, in a large urban city, San Antonio, and understands well how it is to be poor in small farming towns and in the metropolis.

While in San Antonio, the Garcias, whose children's ages range from 8 months to 15 years, live in a two-room house; a bedroom and a kitchen. Asked by Reynoso how the family of 15 sleeps, Mrs. Garcia answered: "In the bedroom I have four [beds], and I have another one in the kitchen, and that is it." Mrs. Garcia related that they have no bathroom, no shower, no television set, no telephone, and no radio set.

The summer before the hearing, Garcia migrated to Michigan and other Northern States and after 3½ months in the fields was able to bring back to San Antonio \$300, after expenses. Asked what he did with the \$300, Garcia answered that much of it went to paying off debts in San Antonio, where he is making payments on his two-room house.

Reynoso: And you are able to keep up with the payments?

Mrs. Garcia: No, we are not keeping up with the payments.

Turning to the husband, Reynoso asked him where he works in San Antonio.

Garcia: . . . I am working for a company, an oil company.

Reynoso: . . . and how much do you make?

Garcia: \$1.35 an hour I am making now.

Reynoso: How long have you been working for this oil company?

Garcia: I have been working for them about 3 weeks

Reynoso: And before that where were you working?

Garcia: In a restaurant.

Reynoso: How much did they pay there?

Garcia: \$1.15 an hour.

In the months before the hearing, Garcia, who had gone to school only 2 months in his life, had worked at what he could from the Rio Grande Valley to the Northern States, but never made more than \$1.35 an hour and never for long.

Directing his questioning to Mrs. Garcia, Reynoso wanted to know whether the family participated in the food stamp program [a plan which permits poor families to buy food cheaply through the purchase of Government stamps].

Mrs. Garcia: No.

Reynoso: Why not?

Mrs. Garcia: We don't have enough money to buy the stamps.

Later, Reynoso asked the woman's teenage daughter, Maria, "Your mother said that you do not participate in the [school] program for free lunches, is that right?"

Maria: Yes.

Reynoso: And why haven't you talked to the principal about [the free lunches]?

Maria: Because I am ashamed.

Reynoso: And if you wouldn't have to ask or beg for food, if it were just offered, would you take it?

Maria: Yes, I would.

Father Ralph Ruiz, a Catholic priest who works in the barrios of San Antonio, told the Commission that even though there are many families like the Chavezes and Garcias, too many people prefer to close their eyes to the problem.

Father Ruiz: . . . They [public officials] deny hunger. You see, we have to preserve an image of San Antonio . . . people can starve and people can be hungry and poor, but let's not tell the Nation this, you know, because we suffer, our reputation suffers. We are more concerned with images than with people.

The priest told the Commission that the exposure of extreme poverty in San Antonio, by citizens' committees and a television program brought into the area FBI agents "asking questions, taking my time to prove that what we claim [poverty and hunger in the San Antonio area] is not true. I can handle these guys myself, they don't [frighten] me and they don't intimidate me. But when they go and bother people who are no match for them, I think this is a crime myself."

Father Ruiz: They [FBI agents] invade the privacy of the poor. They ask them if they are hungry, how much money they make, they go into their kitchens and into their living rooms. . . . They say they want to find out if there are hungry people in San Antonio. What do they want? These FBI agents, what do they know about hunger, about the poor? . . .

Locally, the priest told the Commission: "The welfare system intimidates our people, harasses them, asks them unnecessary questions. The family practically has to go to confession to them in order to get some help. . . ."

As for the food stamp program, Father Ruiz told the Commission that he has seen store signs saying to separate the food that can be purchased with stamps from the rest before going to the cashier.

"This is a public insult," Father Ruiz said. "Why must they have stamps? If stamps equal money, then send them money. All they do is tell the whole store there that they are under welfare. . . ."

Welfare itself, the priest continued, "has become a master over the lives of these people. They fear it."

Rubin asked him to explain.

Father Ruiz: Their total life depends [on it], what other income do they have? When characters like the FBI agents come around asking this kind of questions . . . about how much money you get, does your husband work, what do you eat, are you telling the truth. Their very existence is at stake. Their very existence depends on a paternalistic type and very inadequate type of welfare. It is the master. They get their livelihood from there, and the welfare knows it.

The priest said that the Federal Government, despite his anger with the FBI, should run the welfare programs and that the system should be changed so that people on welfare be given an incentive to work.

After pointing out that some families of four or more members have to survive on \$123 a month, Father Ruiz proposed one solution:

". . . I would put a minimum according to the families, say this family should get \$300 per month. If somebody works in the family and makes \$100, well, then the Government would supplement \$200. The way it is right now, let's say, if the mother works, a mother on welfare works, say she irons clothes or washes clothing for somebody else, to make extra dollars, she has to report that. If she lives in a housing project . . . if she reports this to the housing project her rent will come up. And if the welfare agent knows about this, her check comes down. So it is best for her not to work at all. She endangers what she is getting.

"I know a case where this lady refused to take her social security increase in money because her rent would come up and she would be losing more money than otherwise. So the person is enslaved in this circle. . . . I would give an opportunity to the people to do some work, not to be afraid of work, fearing their check will come low, or the housing rent will come up. To guarantee a monthly income, not to enslave them but to free them."



4

LA EDUCACIÓN
DE MEXICANOS

When the Mexican American in the Southwest complains about having nightmares instead of the American dream, he's usually told: "Education is the answer, amigo. Get an education and your problems will be solved."

Who can argue with that? At the San Antonio hearing, however, the Commission heard experts in the field of educating bilingual and bi-cultural children argue with the premise behind this alleged panacea. The premise, of course, is that the Mexican American child can receive a meaningful education merely by wanting it.

Dr. George I. Sanchez of the University of Texas told the Commission that in his State "persons of Spanish surname . . . 17 years of age or older averaged 4.7 years of school, whereas the Negroes averaged 8.1, and the average of the population averaged 10 plus."

In California, that State's Advisory Committee to the Commission reported that the median school years completed for Mexican Americans was 8.6, for Negroes, 10.5, and for Anglos, 12.1.

Why is Juanito so far behind?

One of the reasons is that many Mexican American children enter school speaking little or no English because, generally, only Spanish is spoken at home. About the first thing that Juanito encounters at school is an IQ [intelligence quotient] test—in English. Usually, he makes a bad showing because of his limited knowledge of English. This means that at best he will be considered a “slow learner” and treated accordingly; at worst he will be placed in classes for the mentally retarded. Either way, the child begins his school career with a stigma which will remain for the rest of his life. Though many educators have recommended abolishing IQ tests in the early grades—as has been done by the Los Angeles School District—others have recommended that the tests be made more realistic.

In California, Mexican American students once labeled mentally retarded showed dramatic increases in their IQ scores after taking Spanish-language tests. The report of the tests, submitted to the California Board of Education in May 1969, said that some children have been victims of a “retarding influence” by being left in the mentally retarded classes for long periods of time. The children who took part in the study were in such classes on the basis of English-language IQ tests. When they were retested in the Spanish language, the children’s IQ scores jumped by as much as 28 points.

Unfortunately, such studies, as enlightening as they are, do not change other realities. Reforms, which cost money, must be implemented to change the shabby education which many Mexican Americans receive. In Texas, although State allotments to school districts are determined by the average daily attendance, also considered are the level of academic attainment and the length of teachers’ experience. Consequently, inequities are created between wealthier “Anglo districts” and less affluent Mexican American districts.

A Commission staff study of nine school districts in the San Antonio area showed that in the Northeast School District [predominantly Anglo] expenditures per pupil from all revenue sources in 1967–68 amounted to \$745.07. In the Edgewood School District [predominantly Mexican American] expenditures per pupil, also from all revenue sources, amounted to \$465.54. The staff report showed that 98 percent of the noncollege degree teachers employed in the nine San Antonio districts are concentrated in the predominantly Mexican American districts.

An Edgewood district student told the Commission that a teacher admitted to a class that he was not qualified to teach the course and asked the students to bear with him. Another student testified that Mexican Americans are counseled away from college and into vocational training. A high school senior said Armed Forces representatives go to the schools before graduation to induce boys to enter the service. Commissioner Hector Garcia wanted to know whether any scientists,

doctors, lawyers, or businessmen ever visited the schools to encourage graduating students to enter these fields. No, the boy answered.

Edgewood's financial situation could be improved, for example, by merging with the San Antonio Independent School District. Edgewood has unsuccessfully petitioned for merger several times to equalize Edgewood's property tax base with that of San Antonio's. But political realities are at work to make this impossible. Indeed, districts are often created to avoid integration of Anglo and Mexican American students. In one case in Texas, the students residing at Laughlin Air Force Base [89 percent Anglo] are bused through the 97 percent Mexican American San Felipe School District (in which the base is located) to the Del Rio School District [51 percent Anglo].

As a result, Federal funds are awarded the Del Rio district for the education of military dependents. For example, in 1966 Del Rio received more than \$200,000 in Federal impacted aid funds, while San Felipe, whose district boundaries encompass the Air Force installation, received less than \$41,000.

In an impassioned plea to the Commission, Homero Sigala, school superintendent at San Felipe, called this situation "unfair" and asked that the Commission advise the President, Congress, and the Air Force "to direct the Commander at Laughlin Air Force Base to send the students residing at Laughlin to the San Felipe schools."

Unfair though it may be, the political reality of the situation is that even though Val Verde County, where San Felipe is located, is about 50 percent Mexican American, there are no Mexican Americans on the five-member county school board. In other words, Mexican Americans have no political muscle to make much of an impression on Washington.

This might be attributed to what Dr. Jack Forbes of Berkeley's Far West Laboratory for Educational Research and Development described to the Commission as the "conquered population" syndrome. The indigenous people of Mexico, who included those in what is now the American Southwest, first experienced the Spanish conquest, followed by a long period of colonialism, Dr. Forbes explained. This was followed by the Anglo-American conquest of the Southwest, at the end of the Mexican-American War.

To understand the significance of this syndrome, Dr. Forbes continued, "one must of course get past the romance and mythology of the supposed westward movement of the pioneers and look at the Anglo-American conquest of the Southwest as we might look at the German march eastward against the Poles or as we might look at the Franco-Norman conquest of England, in other words, in a purely detached and objective manner."

And if we are to do this, continued Dr. Forbes, "we would see the U.S. conquest of the Southwest as a very real case of aggression and imperialism, that it involved not only the military phase of immediate conquest, but the subsequent establishment of a colonial society, a

rather complex colonial society because there was not one single colonial office to administer Mexican American people. Instead, there were many institutions that were created to control and administer Mexican American people and also to enable the dominant population to acquire almost complete control of the soil and the other forms of wealth, of the social institutions, cultural institutions, and so on.

"Now the conquest in the colonial period can be further understood if we think about a community such as the city of Los Angeles in California which has long had a large Mexican American population but in which no major institution of any kind is controlled even proportionately to numbers by the Spanish-speaking population."

The concept of conquest, the Berkeley historian told the Commission, is very often ignored but "I can't emphasize it too much because we're beginning to learn the process of conquest," particularly the "tremendous effect upon people's behavior."

"For example," Dr. Forbes continued, "a conquered population tends to exhibit certain characteristics such as apathy, apparent indifference, passivity, and a lack of motivation in relation to the goals of the dominant society."

Another dimension of the Mexican American educational quandary was posed by Dr. Manuel Ramirez, an assistant professor of psychology at Rice University, Houston, who spoke of the conflict of cultures between the Anglo and the Mexican American.

"My research has identified two different kinds of conflict," he stated. "The first type arises as a result of the fact that [the Mexican American] is led to believe that he cannot be identified with two cultures at the same time. There is one message that is given by his parents, his relatives, and other Mexican American students, who tell him that if he rejects Mexican American culture and identifies with the Anglo culture, he may be considered a traitor to his ethnic group." Dr. Ramirez went on to say: "The other message comes from teachers, employers, and Anglo friends, who tell him that if he doesn't reject the Mexican American culture, he will be unable to reap the educational and economic benefits that are in the Anglo culture."

"The second type is really a series of conflicts which come about because the Mexican American student is bringing with him a series of behaviors, perceptions, methods of viewing the world, of doing things . . . and this conflicts with the value system of the Anglo middle class." Then he concluded:

"The big problem that we face as Mexican Americans is, how can we have our children maintain as many of the Mexican American values as possible and still be a success in the Anglo world? . . . And if we could have people who are sensitive to our culture, people who understand our problems and don't take this as a criticism to some teachers, I think that people like myself and others in Texas and other parts of the Southwest are living testimony that there were some Anglo teachers who work, but there aren't enough of them."

Giving another view, Dr. Sanchez told the Commission that one of the barriers to educational reform in Texas was "the poverty of Mexican Americans and their lack of effective statewide political organization."

"[Mexican Americans] have not been heard yet as an effective political force," Dr. Sanchez said. "We number some 2½ million in the State of Texas and that political weight has not been effectively harnessed to bring about reforms."

Nevertheless, testimony at the San Antonio hearing indicated that young activists are beginning to stir in the "conquered" Mexican American community.

Homer Garcia, a student at San Antonio's Lanier High School, told the Commission how a group of students and parents fought for a change in curriculum in the predominantly Mexican American school to include such studies as chemistry, physics, algebra, trigonometry, calculus, and computer programing. According to Homer, about 500 parents and 500 students turned out to a meeting in a community hall to hear the student demands for a better education. At another Mexican American school, Edgewood High, students demanded better qualified teachers.

Howard A. Glickstein, then Acting Staff Director of the Commission, asked Homer how the turnout of parents to the Lanier High School meeting compared to the number of parents who usually attend PTA meetings.

Homer: Nobody comes to PTA meetings. For one thing, the parents really don't know what a PTA is, because they're held during the daytime when—well, my parents, for instance, can't go to the PTA meeting because they are held during the day for the convenience of the teachers. My dad works during the daytime. My mother has to take care of my brothers. I mean, it is not to their convenience at all. It's a teachers' organization, not a parent-teacher organization.

The concern of students and parents for better education at San Antonio's Mexican American schools brought about positive results, according to student testimony. Much credit was given to parents who backed the students in their demands for curriculum reforms. Community participation in implementing school reforms is essential, the Commission was told, if the powerlessness and alienation felt by the Mexican American community is to be corrected. Ignoring the community while planning reforms is not only an insult to parents, the Commission was told, but it also indicates that groups of elite educational reformers seem to think they are the only ones who know what's best for the children.

In at least three instances, Anglo educators in their testimony to the Commission revealed that cultural differences and the involvement of the Mexican American community were not even considered in preparing studies or proposing school reforms. The director of the Texas Governor's Committee on Public Education admitted that Mexican

American parents were not consulted during a 3-year study on improving education in Texas; a member of the Governor's committee related that not one top-notch Mexican American educator was consulted during this same 3-year study, and the State commissioner of education said he was not familiar with studies which indicate that Mexican Americans experience culture conflict when they enter an Anglo-oriented school system.

If regular education for Mexican Americans is inadequate and unrealistic, the education of migrant children is a national scandal.

Dr. Joseph Cardenas, director of Migrant Education for the Southwest Educational Development Laboratory and now superintendent of the Edgewood School District, estimated that the dropout rate for migrant children is about 90 percent. But more "startling," said Dr. Cardenas, is the fact that "one-fifth of migrants are school dropouts at the preschool age. That is, one-fifth of all migrant children never enroll in any school in spite of the State's compulsory attendance laws. So by the time they [migrant children] start the first grade, or they are 6 years old, you have already lost 20 percent of your population."

Of the 65,000 migrant students in Texas, less than 14 percent are in the upper six grades, Dr. Cardenas disclosed. The average income of the Texas migrant, he continued, is \$1,400 a year and a "person with this amount of money will have a lot of difficulty in educating his children adequately."

The only solution, Dr. Cardenas said, is a multi-State educational program geared especially for migrant children, to follow them wherever the parents are following the crops. After agreeing that this would cost a great deal of money, Dr. Cardenas asserted that actually the only real solution is to stop migration altogether. This last drew the applause of the audience. But the perennial question loomed:

How can Mexican Americans in the border States afford to stop migrating as long as armies of cheap labor are allowed to cross the international border?

While this part of the hearing was intended to probe into the educational problems of Mexican Americans in the Southwest, something just as important emerged from the testimony: the Anglo children (and for that matter, the Negroes) had been cheated also—they had not been permitted to take advantage of the Southwest's cultural and language heritage. This became clear when Harold C. Brantley, superintendent of the United Consolidated School District of Webb County, Texas, explained his district's bilingual program.

It should be noted that the United States' first full-fledged bilingual program in public schools was not initiated in the Southwest, where its need had been apparent for generations, but in Florida—following the Cuban crisis. It was in Florida that Brantley got some ideas for the bilingual program in his school district.

The philosophy behind his approach, Brantley told the Commission, was that "I don't feel like a kid's ability to speak Spanish is a detriment. I think that it is an asset. . . . It is merely our responsibility as educators to turn this asset that these kids bring to us, where it not only becomes an asset to them, but can become an asset to the little blue-eyed, blond-haired Anglo."

Brantley's district is made up of the larger part of the rural area of border Webb County—some 2,400 square miles—and does not include the county's largest city, Laredo. The district has 987 students, 47 percent of them Mexican American and 53 percent Anglo. Without waiting for more research, specialized teachers, bilingual instructional materials, or substantial financial resources, Brantley in 1964 persuaded his staff, Anglo and Mexican American parents, and the Texas Education Agency to begin a bilingual program in his bicultural district.

Today, in the district's three elementary schools, instruction is 50 percent in Spanish and 50 percent in English in the first through fifth grades.

"I am not a linguist," Brantley explained to the Commission. "My sole service is creating [an] atmosphere where things can happen."

Brantley said his program does not ignore the fact that it is very important for schools to facilitate Mexican American children "getting into the mainstream of the dominant culture and the dominant language of the country." By the same token, Brantley continued: "We also try to stress to that child who comes from this other culture, speaking this other language [that] we want to provide him with the opportunity to improve upon his knowledge of his culture and his ability to function in his vernacular."

As for the Anglo child, Brantley said, his district tries "to create an atmosphere in the classroom where the children who come to us from the dominant culture, speaking the dominant language . . . recognize that here this little kid [Mexican American] has got something that he [Anglo] doesn't have, and that he ought to be interested in getting what this little kid can teach him."

Warming up to the subject, Brantley asked the Commission: "Now, can you begin to see what this does for the stature of this little kid that comes from this other culture with this other language? Where he is made to feel like he can do something that somebody can't do, and that he has something that this other little kid wants to learn about?"

The Commission understood.

5

NO HAY TRABAJO

When Mexico lost the Southwest to the United States, the Treaty of Guadalupe-Hidalgo specifically guaranteed the property and political rights of the conquered native population. The treaty, executed on February 2, 1848, also attempted to safeguard the Mexican culture and language.

Throughout the San Antonio hearing, it became clear that Mexican Americans in the Southwest cling tenaciously to their ancestors' culture and language. But it also became evident that the spirit of the treaty has been violated.

Though Mexican Americans persist in retaining the Spanish language, they do so at the price of obtaining a second rate education because bilingualism has been suppressed and has never been accepted as an asset. Though they have kept their culture, they have had to pay for it by being stereotyped as backward or, at best, quaint. Nowhere is this more evident than in the jobs Mexican Americans have traditionally held in the Southwest and the jobs they hold now. It is almost the rule that only Mexican Americans who have been willing to sacrifice their culture and language have succeeded in an Anglo society.

Carey McWilliams in "North From Mexico" says that the "basic factor retarding the assimilation of the [Southwest Mexican], at all levels, has been the pattern of his employment.

"With few exceptions," says McWilliams, "only a *particular class* of employers has employed Mexican labor in the Southwest: large-scale industrial enterprises, railroads, smelters, copper mines, sugar beet refineries" and, of course, agriculture. . . . "Traditionally," continues the author, "Mexicans have been paid less than Anglo Americans for the same jobs. These invidious distinctions have reenforced the Mexican stereotype and placed a premium on prejudice . . . the pattern of employment . . . dictated the type and location of residence. Segregated

residential areas have resulted in segregated schools, segregated schools have reenforced the stereotype and limited opportunities for acculturation.

"In setting this merry-go-around in motion, the pattern of employment has been of crucial importance for it has stamped the Mexican as 'inferior' and invested the stereotype with an appearance of reality. . . ."

It was revealed at the San Antonio hearing that in some industries Mexican Americans are not even employed as laborers.

Under questioning, Ralph Allen, director of employee relations, El Paso Natural Gas Company, told the Commission that in the company's Permian division no Mexican Americans are employed as unskilled laborers. Working for the company is considered unusually beneficial because it does not offer the dead-end jobs Mexican Americans often get. Allen said the company's Permian division laborers must be high school graduates "because they advance from that on up through."

Commissioner Hector P. Garcia noted that in part of the operating area of the El Paso Natural Gas Company, the percentages of Mexican Americans by county are the following: Jeff Davis, 56 percent; El Paso, 44 percent; Brewster, 42.6 percent; Presidio, 40.5 percent; and Hudspeth, 29.4 percent.

In the city of El Paso, where the company makes its headquarters and is about 50 percent Mexican American, Allen testified that out of 1,150 employees only 13 percent were Mexican American.

Commissioner Garcia noted that El Paso was "practically the first settlement north of the Rio Grande that was colonized by Spaniards and Mexican Americans" and that Spanish-speaking people have been in the area for "hundreds of years." "And yet," Garcia said, ". . . you haven't been able to find one single Mexican American that you could . . . employ as a laborer . . .?"

Working for the telephone company can be advantageous because of good wages and opportunities for advancement. Telephone companies, as well as any other firms having contracts with Federal agencies, must comply with Executive Order 11246 which requires affirmative action in seeking out members of minority groups for employment.

Joe Ridgway, employment manager for the San Antonio metropolitan sector of the Southwestern Bell Telephone Company, was questioned about the Executive order by the Commission's Acting General Counsel David Rubin.

Rubin: You still haven't answered my question as to whether you have ever received a communication which has directed you to take affirmative action to seek out members of minority groups for employment.

Ridgway: Yes, sir, we have and are following an affirmative action program that has been presented to me.

Rubin: When was that done?

Ridgway: In November.

Rubin: Of this year?

Ridgway: Of this year.

In other words, though Executive Order 11246 was issued in 1965, Ridgway testified that a program of affirmative action in employing members of minority groups was not initiated until November of 1968, a month before the Commission hearing.

Ridgway added, however, that the program was meant to "continue" to "pursue the things that we have historically done in this area."

This exchange followed:

Rubin: Prior to speaking with staff members of the Civil Rights Commission, were you aware that less than 15 percent of your employees were members of minority groups?

Ridgway: As I remember, there was some question as to exact percentages, and that 15 percent mentioned was a little on the low side.

Rubin: Were you aware of the percentage of the total number of employees constituted by minority groups at that time?

Ridgway: Yes, I was conscious that there would be a percentage.

Rubin: But you didn't know what the percentage was?

Ridgway: The actual percentage, I did not know what it was and had no way of knowing it at that time.

Rubin: Now, your 1968 [Equal Employment Opportunity—1] form shows that out of 626 craftsmen, only 12, or under 2 percent have a Spanish surname. How do you account for this in a city that is close to 40 percent Mexican American?

Ridgway: Though I would like to answer your question, I am at a loss as to how to historically go back. It predates what I am personally acquainted with and could answer to. . . .

Yet, a couple of minutes before, Ridgway had testified that the company's new program for affirmative action in employing members of minorities was merely "to pursue the things that we have historically done in this area." Despite Ridgway's seeming confusion over the historical practice of employment discrimination, it became apparent at the hearing that historically the Mexican American and other minorities had been victims of discrimination in employment.

It was put quite bluntly when Rubin questioned Robert A. Wallace, Deputy Assistant Secretary of the Treasury.

Rubin: Mr. Wallace, the banking industry has been said to have been traditionally—and I am quoting, "a white man's industry." Would you agree with that characterization?

Wallace: Until about 2 years ago, I would have to agree with that, yes. . . .

Wallace's reference to "2 years ago," coincides with a 1966 Treasury Department ruling that all banks receiving Federal deposits are cov-

ered by Executive Order 11246, and therefore are required to undertake affirmative policies to recruit minority group persons.

A Commission staff report, however, showed that though all banks visited reported that they had Federal deposits, only two said they had been informed of this requirement by the Treasury Department. And, only one bank reported the establishment of an affirmative program to recruit minorities. The staff report also revealed that in San Antonio, where almost half of the population is Spanish-speaking, only 5.6 percent of all bank officials were Mexican Americans, and nearly half of them were found in one bank, the Frost National Bank. Seven banks reported that none of their officials were Mexican American and five others reported that they had only one Mexican American official.

Of the clerical and office workers, 16.4 percent were Mexican American and 1.4 percent were Negro. The percentage of Mexican American office workers ranged from 100 percent in one bank (located in the predominantly Mexican American area) to less than 1 percent in two banks.

In the schools, a staff report indicted that in the San Antonio Independent School District there were 14 Mexican American administrators out of a total of 132 administrators. In the Bexar County [where San Antonio is located] Welfare Department, Mexican Americans held close to 50 percent of all jobs and nearly one-third of the supervisory and administrative positions. But, the report notes, though Mexican Americans comprised 75 percent of all welfare recipients in Bexar County, only 20 of 91 social workers, or less than 22 percent, were Mexican Americans.

In nine restaurants surveyed by the Commission staff, less than 15 percent of the customer-contact positions were held by minorities, while minorities held 93 percent of the noncustomer contact positions. The staff report showed that at the Texas Employment Commission, the State agency responsible for aiding persons in obtaining employment, Mexican Americans held less than 7 percent of the nonclerical and custodial positions in the State of Texas.

In emphasizing that the Commission was not trying to condemn one section of the country or any one industry, Commissioner Theodore M. Hesburgh said that in its 11-year history, the Commission has found that "there isn't a single city, North, South, East or West, where we have gone to, where it doesn't appear very difficult for minority groups to have some kind of adequate representation in all kinds of businesses and professions and trades.

"As a matter of fact," continued Commissioner Hesburgh, "I could say quite openly, the most difficult task we have had is with the construction trades where the minorities find it very difficult to become members of the unions."

The historical pattern of employment for Mexican Americans was perhaps best dramatized by the controversy over employment practices at Kelly Air Force Base, one of San Antonio's major employers.

There is so much argument on the subject, that between June 1966 and December 1968, there were six surveys of equal employment practices conducted at Kelly.

One of the reports, that of the Texas State Advisory Committee to the Commission, issued in June 1968, found that at Kelly Field there "are broad and glaring inequities in the distribution of supervisory and higher grade positions among Mexican Americans and Negroes. . . ."

The Advisory Committee said that among Mexican American white-collar employees at Kelly, 68.9 percent were in grades 1-5, for which the initial per annum salaries in 1966 were \$3,609 to \$5,331.

In the higher pay scales, the committee reported, even though Mexican Americans comprise about 44 percent of the total work force, only 8 percent of them were in the \$9,221 per year and up white-collar jobs and only 5 percent were in the \$7,000 and up blue-collar jobs.

The Advisory Committee also asserted that "there exists at Kelly Air Force Base and in the San Antonio community, among a significant number of Mexican American citizens and leaders, a lack of confidence in the base's management and equal employment opportunity program. The Mexican American community feels that it does not receive equal treatment and that Kelly Air Force Base management has failed to remedy this situation, despite the community's protestations. This fact takes on greater significance when it is recognized that Kelly Air Force Base is one of the largest employers of Mexican Americans in the Nation."

Dennis Seidman, Air Force Deputy Chief of Staff Personnel, on the other hand, curiously concluded, after his staff conducted a study, that there was a "lack of credibility" on the part of the Mexican American community, but asserted that there did not seem "to be a significant number of employees who felt that the employment opportunity program was a negative kind of program." Seidman also told the Commission that he himself was not personally at Kelly during this particular study but drew his conclusions from reports by 12 personnel management experts who spent 6 weeks at Kelly.

Howard A. Glickstein, then Acting Staff Director of the Commission, reminded Seidman that the Commission's Texas State Advisory Committee report showed that in 1966, Mexican Americans held 11.6 percent of the starting high grade jobs at Kelly. And that in 1967 that figure was 12.3 percent.

"And your report," Glickstein continued, "I believe shows that in 1968 it was 13.7 percent.

"Now the Mexican Americans represent about 30 percent of the [higher category] employees, and about 44 to 45 percent of the total work force. Would you consider that a broad and glaring inequity?"

Seidman: I think we have considered that in the report to be an imbalance in the number of people in each of these grades as related to their proportion in the population.

Glickstein: Mr. Seidman, there is one overriding impression that I receive by reading your report, and I wonder if you would care to comment on it. It seems as though the word discrimination, or the word inequity, is just a dirty word that will not be used. Is there any reason why that is so?

Seidman: . . . We put no value either positive or negative on those words. We have no evidence to indicate that there is discrimination. We have no empirical evidence that there has been discrimination and therefore the word discrimination does not appear.

Glickstein wanted to know whether Seidman disputed a report issued by the subcommittee of the equal opportunity committee at Kelly before the hearing which asserted that "minority group members employed at Kelly during the period 1917 to 1966 did not have equal employment opportunities."

Seidman: I think the phrase . . . which projected, as it were, a historical discrimination, is just that; a projection. I don't believe there are any—there are any empirical evidence in our report to indicate that there has been discrimination, by organization, by grade, or by individuals.

Glickstein: Do you think it is possible to find out if there has been discrimination? Do you think that is a relevant consideration?

Seidman: I think it is possible. I wouldn't know at the moment how to find out, historically.

Later, Glickstein pointed out that at the rate Mexican Americans were obtaining higher grade level jobs at Kelly it would take about 17 more years to equalize the situation. "And if they were to attain a proportionate number of jobs in proportion to their representation in the entire work force, it will take until about 2000."

Seidman answered that he thought "there are many, many factors that impinge on predicting the rate of movement," and that minorities had made good progress in moving up to the higher levels especially in the past 12 months.

Later, Matt Garcia, a Mexican American attorney who had handled job discrimination cases, told the Commission he felt the Air Force survey team, headed by Seidman, had come to San Antonio, "only in an effort to negate the Texas State Advisory Committee's report." Seidman had earlier testified that it was just a "coincidence" that his team made the study just after the Advisory Committee's and just before the Commission met in San Antonio.

Attorney Garcia also charged that Seidman's contention that members of minorities were obtaining more higher paid jobs at Kelly was misleading because Seidman did not mention that more higher level positions had been created in 1968. It's true, he said, that in 1966 there were 142 Mexican Americans in the beginning category of the higher paying jobs but the number had increased to 208 in 1968.

Furthermore, he continued, Seidman did not mention the fact that in 1967 there were 1,434 such jobs while in 1968 there were 1,520.

Maj. Gen. Frank E. Rouse, Commander of Kelly Air Force Base, told the Commission he didn't believe "there was any necessity for Mr. Seidman and his [surveying] team in the first place," but he agreed that there is "an ethnic imbalance" in the number of good jobs Mexican Americans have at Kelly. However, he agreed with Seidman that this was not caused by "discriminatory acts either in the recent past, or the fairly distant past."

I must believe what I see, can touch, and prove. And I think the conclusion I come to is that under the merit promotion system, rightly or wrongly, the opinion is that the best people were promoted."

Despite General Rouse's contention that discrimination must be seen and touched to be proven, Mexican Americans have long noted that racial prejudice against them has been perpetrated in a more subtle way than against blacks but that it has been just as effective.

Prof. Daniel P. Rodriguez of Trinity University in San Antonio, who also conducted an employment opportunity study at Kelly, explained to the Commission how this subtle discrimination works.

During his investigation, Rodriguez told the Commission, he got the impression that Kelly management "were complying with the requirement of the [equal employment opportunity] regulation without complying with the spirit of it."

Some of management's remarks, Rodriguez said, "led me to believe that among some of these men, even though they felt there was no prejudice or bias on their part, they were not even aware of it."

Rodriguez: I had one supervisor tell me that when a Mexican American was promoted you had to be careful to insure that the Anglo group there was going to accept him as a supervisor. What he left unsaid of course—and I casually pointed it out to him—was that when an Anglo was being promoted that there was never any question about whether he could handle minority group people working under him.

Glickstein: Did you think that he thought he was discriminating?

Rodriguez: I am positive that he didn't feel that he was discriminating, or that the statement he made to me was—that there was anything wrong with it. I think he was a little bit surprised when he realized what he had said.

The historical pattern of Mexican American employment can be changed abruptly for the better with imagination, know-how, sensitivity, and money. This was the message conveyed to the Commission by Joseph B. Andrasko, director of industrial relations for the aeronautics division of the Ling-Temco-Vought Aerospace Corporation of Dallas, in one of the hearing's most positive presentations.

Andrasko said that in 1965, his company, which builds airplanes, foresaw the need for about 14,000 semi skilled and skilled workers for its expansion program. Dallas, where the company is located, could not

be a main source of labor because that city had a less than 2 percent unemployment rate. It was suggested that the Rio Grande Valley, whose unemployment rate is very high as a result of the cheap labor available just across the border, be considered as a source for workers.

"This came as much of a shocker," Andrasko said, "as the Rio Grande Valley is approximately 450 to 500 miles from our plant. . . ."

Nevertheless, the company took the plunge and after 2½ years of negotiations with local, State, and Federal agencies, the company reached an agreement to train 750 persons in the Rio Grande Valley in a period of 12 months. Of the 750 persons who entered the training program, 684 finished the course and 622 were still on the payroll at the time of the hearing. The trainees, 97 percent of them Mexican Americans, who could not have hoped to earn more than \$1,200 to \$1,500 a year in the Valley, started making \$5,000 to \$6,000 a year after 5 weeks' training.

It was quite an undertaking, considering the workers had to be uprooted from the Rio Grande Valley to live in a Dallas suburb, where they would have to look for housing and schools for their children. These problems were solved, Andrasko said, by assigning company counselors to help the workers get settled in Dallas.

"The counselors were Mexican American," Andrasko said, "all of them. And we did it by design."

Federal and State funds provided wages for the trainees while they trained, salaries for instructors, rent for equipment that had to be taken to the Valley, and transportation for the workers from the Valley to Dallas. It cost the State and Federal Government about \$1,200 per trainee.

Was the money well spent?

Andrasko told the Commission that the company made a survey which showed that when the trainee started working full-time it took about 18 months for the newly trained worker to pay \$1,200 in taxes.

"As a taxpayer I'd say you're darn right [the money was well spent]," Andrasko said.

The trainees, Andrasko added, turned out to be "conscientious, hard workers and followed instructions." As a matter of fact, he continued, the first two wing panels which they built after training were found to have no defects by the inspectors.

The team of Mexican Americans who were brought to Dallas from the Valley broke the myth that Mexican Americans can do only certain types of work, Andrasko said. All they needed was an opportunity to prove themselves.

6 LA LEY

Justice is the most important word in race relations. Yet too many Mexican Americans in the Southwest feel with David Sanchez, Los Angeles Brown Beret leader, that "to Anglos justice means 'just us'."

La Ley or The Law, as Mexican Americans call the administration of justice, takes forms that Anglos—and even Negroes—never have to experience. A Mexican American, though a third generation American, for instance, may have to prove with documents that he is an American citizen at border crossings while a blue-eyed blond German immigrant, for example, can cross by merely saying "American."

Besides the usual complaints made by racial minorities about police brutality and harassment, Mexican Americans have an added problem: sometimes they literally cannot communicate with the police. A Commission report told of a young Mexican American, who, while trying to quell a potentially explosive situation, was arrested because the police officers, who did not understand Spanish, thought that he was trying to incite the crowd to riot.

In another case, the Commission report told of a Mexican American in Arizona who was held in jail for 2 months on a charge of sexually molesting his daughter. As it turned out, he had been mistakenly charged with this offense, but he did not voice any objections at the time because he did not understand the proceedings and no interpreter was provided for him. A probation officer, who spoke Spanish, talked to the defendant later and upon learning the facts explained the situation to the local magistrate, who dismissed the case.

One of the many reasons a Mexican American cannot relate well to *La Ley* is that he doesn't see many of his own in positions of authority serving on agencies which administer justice. The 1960 census indicated that Mexican Americans represent about 12 percent of the Southwest's population. In 1968, only 7.4 percent of the total uniformed personnel in law enforcement agencies in the Southwest were Mexican Americans, according to those agencies answering a Commission questionnaire.

As for policymaking positions, the Commission learned in its survey that only 10 law enforcement agencies are headed by Mexican Americans and eight of these are in communities of less than 10,000 in population.



(A Commission study of the grand jury system of 22 California counties concluded that discrimination against Mexican Americans in juror selection is "as severe—sometimes more severe—as discrimination against Negroes in grand juries in the South.")

In East Los Angeles, which is the largest single urban Mexican American community in the United States, "friction between law enforcement and the Mexican American community" is on the increase, according to a psychiatric social worker, Armando Morales.

Morales is State chairman of the California Unity Council, Police Community Relations Committee, which is composed of members from five statewide Mexican American organizations—the Community Service Organization, the League of United Latin American Citizens, (LULAC) the Mexican American Educators, the American GI Forum, and the Mexican American Political Association.

One of the reasons for this increasing friction, Morales told the Commission, was that "gradually the Mexican American community is becoming much more aggressive as to its social demands, its social needs. It is becoming more active. And, at the same time, law enforcement is becoming much more suppressive, hence creating that much more friction between the two." Morales also contended that police aggressive behavior seems to be condoned by high level government.

Morales charged "indifference and apathy to the justice and needs of the Mexican American" by the Federal Government. He said his council investigated 25 cases of alleged police brutality, five of which were submitted for consideration to the FBI. The FBI referred them to the U.S. Department of Justice, which in turn ignored the matter, according to Morales.

The Reverend John P. Luce, rector of the Epiphany Parish in East Los Angeles, agreed with Morales that communication between Mexican Americans and the Los Angeles police had broken down and said he feared "we are on a collision course in Los Angeles" along the lines of a "police-barrio confrontation." Rev. Luce charged that the Los Angeles police and sheriff departments "refuse to talk with militant and political leaders with whom they might disagree, with young people, with a whole variety of activist people who want change."

The Anglo clergyman told the Commission that the indictment of 13 Mexican American leaders in the March 1968 East Los Angeles High School walkouts has led to the strong feeling that "the [Los Angeles] district attorney has singled out the Mexican community because he thought they were weaker than some other communities" but that he "miscalculated on this point, because the Mexican is organizing even that much more."

A Commission staff report said that "one of the most common complaints (throughout the Southwest) was that Anglo juvenile offenders are released to the custody of their parents and no charges are brought, while Mexican American youths are charged with offenses, held in custody, and sent to a reformatory."

A counselor for the New Mexico State Employment Office told the Commission's Advisory Committee:

"... I was very shocked when I became involved in working with young [Mexican American] people . . . and found that charges were made against them, such as stealing cantaloupes out of a farmer's field, curfew violations, being truant from school, and things like this. These would all be on record and they all have quite extensive juvenile records. Among the Anglo people I work with, this just [isn't] done. I don't think the Anglo children are this much better."

The Commission's report further stated that it is felt throughout the Southwest that "the most serious police harassment involves interference with attempts by Mexican Americans to organize themselves in order to assert their collective power."

To the advocates of brown or Chicano power, the Texas Rangers, or "*Los Rinches*," are the symbols of this repression. The Texas Rangers is an elite 136-year-old statewide law enforcement agency under the Texas Department of Public Safety. At the time of the hearing there were 62 Texas Rangers, none of them Mexican Americans.

To the Mexican American, especially the poor, such as the farm worker in the Rio Grande Valley, the Rangers in their Stetson hats, fancy boots, hand tooled revolvers, and holsters personify everything they fear: tough-talking, rancher-grower types who can run you out of town at the slightest suspicion that the Mexican Americans want to assert themselves.

"The Rangers are the cowboys and we're the Indians," say Mexican Americans.

Farm workers, labor organizers, and civil rights workers testified before the Commission that the Texas Rangers break agriculture worker strikes in the Rio Grande Valley through force and intimidation. The unionization of farm workers is seen as a holy war in Texas where farm hands get no workmen's compensation, no State minimum wage, no unemployment and disability insurance, and where there are no mandatory standards in farm worker housing. (In contrast, California requires by law all of these things.)

Reynaldo de la Cruz, 26, a farm worker and father of six children, who had been arrested six times for union activities, told the Commission he joined the union because of "what every Mexican American farm worker faces, that they have been cheated too long . . . because I had been cheated too many times. [I joined the union] so that we could fight for our rights and for the rights of other people that don't know how to defend themselves."

Asked what the feeling of Mexican Americans is toward the Texas Rangers, José M. Martinez, a farm worker, told the Commission:

"Many people hate them, many people are afraid, because the majority of the Mexicans are not armed. They [Rangers] are armed. And when the Rangers are coming, then the people are afraid. They are

afraid of being hit, or being pushed around. . . . The minute that you hear the Rangers are coming, everybody hides. If you are on strike, if you know the Rangers are coming, then they don't want to strike. This is the feeling of the people in the Valley. They are afraid."

Trying to determine what Mexican Americans thought of Government as an administrator of justice, Howard A. Glickstein, then Acting Staff Director of the Commission, asked farm worker de la Cruz whether in his work as a union organizer he saw the State government and State officials as friends or enemies.

De la Cruz: Well, considering that the Rangers are State officials, I think they are our enemies.

Glickstein: How do you view the Federal Government? What do you think of the role the Federal Government has played or hasn't played?

De la Cruz: Well, I am not too sure about the Federal Government. But if they were really our friends, then something would have been done when the Texas Rangers were messing with the strike.

Earlier, Pete Tijerina, executive director of the Mexican American Legal Defense and Educational Fund, had noted that the U.S. Attorney General had intervened on behalf of Negro cases throughout the South but that "not once, not once, has the Attorney General . . . intervened in any Mexican American case."

The Reverend Edgar A. Krueger, an ordained minister whom the Texas Council of Churches sent to the Rio Grande Valley as an observer during a long farm workers' strike, told the Commission of his experiences with the Texas Rangers, including his arrest.

He said he went to Mission, Texas, one night, in the lower Rio Grande Valley, where he heard farm workers would be picketing. When he, his wife, and their 18-year-old son arrived at Mission he learned that 12 farm workers had been arrested. He spotted Ranger Captain Alfred Y. Allee and other Rangers in their parked cars in the drive-in bank on the other side of the railroad tracks. The Reverend Krueger said that since it was Friday night, "when people just gather, visit, and watch the cars go by," there were about 200 people on both sides of the tracks. But no one was trying to gather a crowd, no one was talking to the group, or trying to convince anyone to become a union member," the Reverend Krueger said. "No one was trying to stop the train, nor was anyone carrying a picket sign at that particular time. All we wanted to do was to find out where the persons had been taken that were arrested."

When the train arrived, the Texas Rangers with very long flashlights signaled the train to pass, the minister said, and he decided to take a picture with his wife's small camera from a hundred feet away. "About that time Captain Allee walked right straight down the west side of the street toward me," recalled the Reverend Krueger, "and said, as he was walking up, 'Krueger, I am sick and tired of seeing you around.'

He grabbed me by the collar and the seat of the pants and lifted me practically to the center of the street."

Mrs. Krueger then took a picture of what was happening, the Reverend Krueger said.

"And then Captain Allee yelled, 'Grab that woman,'" the minister told the Commission. "Another Ranger grabbed my wife, and I didn't see it when it happened, but he grabbed her. But I did see later on that he had her arm twisted behind her back."

Captain Allee then turned the minister over to another Ranger and walked up to a farm worker, Magdaleno Dimas, who was eating a hamburger, the Reverend Krueger said.

"Captain Allee slapped the hamburger out of his hand," the Reverend Krueger continued, "and then with double hands slapped him in the face. . . . And then they took me [and Dimas] to the passing train. Since they were running around so rapidly there in something of a frenzy, I was very fearful when they held Dimas, it seemed like his head was just a few inches from the metal that was sticking out from the passing train, and held us there beside the train while it was passing."

After manhandling Dimas some more, the minister, his wife, Dimas, and a friend were thrown into the back seat of a Ranger car and searched, the Reverend Krueger said. Seeing that the pipe of one of the men had bounced off the car doorway, the minister said: "It seemed like a very natural thing sitting on the edge of the seat like that to reach down and pick up his pipe. At that time Ranger Jack Van Cleve, with tremendous force, slapped me in the cheek." The Reverend Krueger, his wife, and friends were arraigned for unlawful assembly. This was a year and a half before the Commission hearing and up to then their case had not come to trial. In charging that the Texas Rangers and sheriff's deputies were "strike breakers," and completely partial to the growers, the Reverend Krueger told the Commission that a sheriff's deputy told him [Krueger] that if he really wanted to help "these people" he should tell them to go back to work.

"And there was an occasion when Captain Allee did say that if the [striking] farm workers wanted jobs he would see that they would get jobs," the Reverend Krueger told the Commission. "And he also said that if they didn't go to work that it would have a depressing effect on the whole Valley, and they would suffer and the whole Valley would suffer if they didn't get the cantaloupes out."

But perhaps the Reverend Krueger's most serious charge was that mass arrests by Rangers and other law enforcement officers usually followed any success the strikers or union had. "For example," said the minister, "the night when my wife and 114 other persons were arrested. This was on the same day, I believe, that the Texas Advisory Committee to the U.S. Commission on Civil Rights finished their hearing in Starr County, in Rio Grande City, and it seemed that that hearing

gave some support to the union's cause, and that same night people were arrested."

Arnulfo Guerra, a Rio Grande Valley attorney, charged that local and State government openly opposed the strike and the farm workers' right to organize and he said that the Rangers in particular "were entirely and completely partial to the growers. And I say this because the people who called them [Rangers] in was the county administration, and the county administration was completely and totally partial to the growers. It was a one-sided affair, and they [Rangers] were excessively partial. . . ."

Ranger Captain Allee, a 36-year veteran of the Texas Rangers, appeared before the Commission on the closing day of the San Antonio hearing.

Commission Acting General Counsel Rubin asked him why the Texas Rangers were sent to Starr County during the farm workers' strike.

Captain Allee: To keep peace and order and to protect the lives and property and to assist the sheriff's department.

Rubin: What was occurring at that time to warrant [the Rangers going to Starr County]?

Captain Allee: It is my understanding that it had been going on a good while and the United Farm Workers Organizing Committee was trying to organize the employees there.

Rubin: And that was the reason why . . . why . . . the Rangers [were] sent?

Captain Allee: That's right. There had been trouble, there was a railroad trestle had been burned and I had my sergeant down there before then and had one or two Rangers there. . . . [the Rangers] were sent . . . to make [an] investigation. . . .

Asked why he had arrested the Reverend Krueger, Captain Allee said "he came up and talked to me, and he got pretty arrogant about it, and he was poking me on the chest with his finger and accused me of putting his men in jail. My people, he called them, my people. And he was loud and abusive.

"And I got Reverend Krueger by the belt and the collar and took him over to the car. On the way over there Mrs. Krueger, she had a camera and she was with him, and about that time I heard someone say, look out, captain. And he said, give me that camera, Mrs. Krueger, and he was Ranger Jack Van Cleve, and he said she attempted to hit me over the head with it."

Rubin wanted to know why the minister was arrested.

Captain Allee: I just got through telling you this, for [being] loud and abusive, and disturbing the peace. Language, of course, one thing and another is why I arrested him.

Rubin: What charge was placed against him?

Captain Allee: I don't know. I didn't file the complaint. I can get that for you and send it to you, if you wish.

Rubin: Did Reverend Krueger resist arrest?

Captain Allee: No, he didn't resist arrest.

Rubin: What did he do? You said that you lifted Reverend Krueger by the seat of his pants?

Captain Allee: No, I didn't lift him by the seat of the pants, I said I got him by the belt.

Rubin: By the belt?

Captain Allee: Yes, sir.

Rubin: Why was it necessary to do that?

Captain Allee: Well, I don't know why it was necessary to do it. . . . I usually grab a fellow by the belt if I am going to take him somewhere. Of course, he didn't especially want to go after I talked to him there a little while.

Later, Rubin wanted to know about the arrest of farm worker Dimas and whether the captain had slapped him.

Captain Allee: I slapped a hamburger out of his hand.

Rubin: Why did you do that?

Captain Allee: Well, he was trying to tell me something, I don't know what it was, and he was spitting that mustard. . . .

Asked what reputation the Texas Rangers have among Mexican Americans, Captain Allee said: "Among Mexican Americans I think they have a good reputation. I worked around the Mexican people all my life. I had a big percentage of the people of Starr, Texas, of Mexican American people send a petition into Austin and I didn't request it, asking the Rangers to stay there because they feared violence and bloodshed. And that petition is on file. . . ."

Questioned whether there were workers in the fields during the strike, Captain Allee responded: "Oh, yes, there were workers in the fields, lots of people working in the fields. I couldn't tell you whether they were from Starr County or not. Some of them were and some of them from across the border, the green card workers.

Glickstein: There were a lot of green card workers?

Captain Allee: I don't know how many.

Glickstein: They come across [the border] in the morning and go home at night?

Captain Allee: That's right.

It was as if Captain Allee was reminding Mexican Americans what they have known for many years: If they rock the boat, they can always be replaced by cheaper Mexicans from across the border.

CONCLUSION

In retrospect, perhaps the most positive result of the hearing was that barrio Mexican Americans came out of it with a feeling that the Government does care about them.

This was no small accomplishment. To Mexicans *el gobierno*, the Government, has traditionally been a natural enemy. Until the Revolution of 1910, which at last made Mexico a free country, Mexicans experienced foreign dictatorships—Spanish colonialism and the French imposed Emperor Maximilian, for example—and domestic dictatorships, Santa Anna and Porfirio Diaz.

It is not surprising therefore that Mexican Americans have an inherent distrust of Government. The older ones remember that during the depression of the 1930's, the Government "incited" Mexican resident aliens to leave the United States to what was almost certain worse poverty in Mexico. Many Mexican Americans over 30 in the border areas can remember unpleasant moments at the hands of the U.S. Immigration and Customs agents at border crossings. They remember learning to live with the fear of deportation posed by *el gobierno* which at any moment might demand proof that they're American citizens and not Mexican nationals.

To many Mexican Americans, dealings with *el gobierno* have always been unpleasant. The contacts with teachers, employment officials, social workers, police, and other representatives of *el gobierno* have,

in many instances, left behind memories of mistreatment and insensitivity.

With the San Antonio hearing there was a breakthrough for Mexican Americans who have felt neglected, if not persecuted, in the past by their Government. They had been studied many times before San Antonio, but at the hearing, for the first time on a national platform, the problems of the Mexican American were explored not only in the general sense but also in the specific.

The obvious challenges of discrimination in employment, competition of cheap labor from Mexico, inadequate education, police harassment, and cultural conflicts were again aired with a monotonous consistency, but there was a difference. This time the investigators talked face to face with members of the "establishment" involved in the areas indicated above and the Commission dealt in precise names, organizations, and systems accused of insensitivity toward the Mexican American.

The hearing did not end in a tone of: "Look, we've got problems and something must be done." Instead, it ended saying in effect: "Look, these people and these situations are keeping us back and this has to be done."

Something else very valuable came out of the hearing—an underscoring of the gravity of the problems that are now bubbling to the surface in the Mexican American community. Only the most insensitive spectator could miss the sense of urgency of the problems of the Mexican Americans and the realization that delay in reaching solutions could only exacerbate those problems.

Following the hearing, though not necessarily because of it, the State of Texas appropriated money for its first bilingual education program, passed a minimum wage law for farm workers, raised the ceiling on money to be made available for welfare benefits, and enacted legislation to prevent confiscation of property outright for a missing delinquent house payment.

The hearing represented another step in a trend toward understanding of the Mexican American which started a few years ago. The creation of the Inter-Agency Committee on Mexican American Affairs in June of 1967, by President Lyndon B. Johnson, showed a growing awareness by Washington of the Spanish-speaking population.

Making the Committee a permanent agency under President Nixon further indicated that the National Government recognized that the Mexican American had unique problems that required separate consideration from the seat of power.

The formation of the Southwest Council of La Raza and the Mexican American Legal Defense and Education Fund with the help of Ford Foundation money showed that the private sector was also interested.

But what probably has most warmed the Mexican American to *el gobierno* is the Government's growing concern for the uneducated and rural Mexican American.

Congress' refusal to extend the bracero program was a significant victory for the Mexican American farm workers who claimed braceros were taking jobs away from them.

The Federal Government's funding of the California Rural Legal Assistance through the Office of Economic Opportunity was further proof that Washington cared about Mexican Americans, who comprise about 67 percent of the State's agriculture workers.

The CRLA was founded on the philosophy that the poor, like the rich, are entitled to good lawyers who take the time to serve their needs.

Mexican American farm workers who, with their fellow black and Anglo colleagues, are the only major occupational group excluded from unemployment insurance coverage and other federally conferred benefits such as collective bargaining legislation, had now someone to represent them in court.

At least technically, the Mexican American farm worker could now defend himself not only from powerful growers but from the Government itself.

As for education, the passing of the Bilingual Education Act of 1967 recognized the absurdity of punishing children for speaking Spanish in the school grounds.

It also showed that the time would come when the knowledge of a second language would become an asset instead of a liability.

A stirring has occurred in the Mexican American community itself. New groups are emerging, older ones are moving in new directions. There is a sense of mobility, typified by expressions of solidarity and demands for change. Not untypical of the mood was the gathering, several months after the San Antonio hearing, of some 1,000 Mexican Americans in Del Rio, Texas, to protest the termination of a VISTA program.

The hearing can be described as a piece of a mosaic, and it provided the groundwork for an even better understanding by the Government of the Mexican American. The information from the hearing was also extremely valuable in the comprehensive studies on Mexican American education and the administration of justice in the Southwest undertaken by the Commission.

So stark was the picture of the Mexican American in the Southwest drawn by the words of the witnesses, so evident was the need for additional resources, that the Commission subsequently approved the conversion of its temporary field office in San Antonio to a permanent installation.

Despite all this, and because change takes time, those attending the hearing could easily come to the conclusion that Mexican Americans have been victims of fraud.

Much of the testimony showed how Mexican Americans have been cheated of things most Americans take for granted: their right to their language, their culture, their color.

This was perhaps most poignantly expressed when Commissioner Hector P. Garcia asked Irene Ramirez, a San Antonio high school girl, whether she wanted to have "nice things."

"Of course," answered Irene, "but from the very beginning we are taught . . . I mean, this is an impossible dream."

"What is impossible, dear?" Garcia asked.

"Going to college and achieving something . . .," she answered.

This exchange dramatized to those attending the hearing that though lip service has always been paid to the theory that Mexican Americans "are like any other Americans," in reality they are not.

The hearing showed that the Mexican American has been made to feel negatively about his Mexican background—to the point where even the word "Mexican" has become a liability.

As a result, Mexican Americans have tried to assimilate into Anglo society as quietly as possible. Some have succeeded. But, if the testimony is to be believed, the attempt at assimilation has failed for too many.

The feeling among activist Mexican Americans—who prefer to call themselves Chicanos—is that Spanish-speaking people should resist any attempt to become American at the expense of their language and culture.

Chicanos also emphasize that assimilation for assimilation's sake has been oversold and that it must be learned once and for all that you can't turn a brown child into a white child through patriotic rhetoric.

The hearing may also have helped kill the myth that with time Mexican Americans will assimilate as have the Irish, Italians, Polish, and other ethnic groups. This argument crumbles with the obvious fact that the United States and Mexico share a 1,800-mile open border, and not an ocean as do the United States and Ireland.

The influence of Mexico on the Mexican American will continue as long as Mexico is there.

The Americanization of the Mexican American has too often meant that he must shun his background and assume a ridiculous role of being what has been described as a "tanned Anglo".

The hearing may have helped bring home an obvious historical fact: Mexicans are not strangers to this land, especially in the Southwest. They are indigenous to it.

The hearing may have focused a growing feeling among Mexican Americans. That is, that they understand the importance of becoming Anglicized but that in the process they insist that Anglos become Mexicanized, if the melting pot theory of America is to have value.

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Rural California:

HOPE AMIDST POVERTY

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(1885)

Poverty is not just a lack of money or education;
 it is racial discrimination,
 it is cultural difference,
 it is a state of mind.
 Most of all, it is a position of non-participation,
 the symptoms of which are apathy,
 fear,
 lack of organization and involvement,
 divisiveness,
 resentment.
 It is self-denigration.

The poor see the law and lawyers as oppressors.
 They come in contact with lawyers when they are being sued,
 when they have been arrested,
 or when their children are in trouble.
 The poor see the law as benefitting those with money
 and with power.
 The poor have little faith that the agents of the law
 --the judges, police, lawyers--
 will protect them,
 the poor.
 The poor see laws meant for their benefit ignored and unenforced.

Most of us see a different world--
 Lawyers are officers of the court;
 the judges (who sit on courts) uphold the law.
 The policemen enforce the law.
 The law is meant to be a protector of the weak
 and of the common good.
 Society cannot exist without laws
 and without the enforcers of these laws
 including lawyers.

California Rural Legal Assistance.....

The poor whom we have represented
 have seen that the law can be a friend;
 that the law can be a vehicle for protecting the rights of the poor;
 that the laws meant for the protection of the poor can be enforced;
 that the powerful, too, can be accountable.

These insights can be the beginning of hope among the poor
 that the law and lawyers
 will serve man
 irrespective of station or wealth.

-- Cruz Reynoso
 Director
 California Rural Legal Assistance

A FEW OBSERVATIONS . . .

"Growers and contractors should be made to have sanitary facilities out in the field for the workers. If there is such a law that these facilities have to be provided, I can't understand what the hang-up is. If it's a law, it's a law. And it should be obeyed. CRLA should help here. Mostly the law is to protect the growers and the rich. Most of the time, when a farm worker is in contact with the law it is because he is in trouble with the law, or the law is being used against him. And that isn't right."

--ROSENDO MONTANA, farm worker, McFarland

California has one of the most extensive series of laws designed to protect the health and safety of farm workers in the nation. Government agencies charged with their enforcement have been derelict in their enforcement duties. CRLA has brought a number of suits, only some of which have been successful, seeking to compel the government to apply the standards set by the law to the rich as well as the poor.

"I have worked for the same employer for more than a year. He grows artichokes, and I have no complaint with him. He is fair with me. Last year because of the rains I could not find work for about three months during the winter. This year when the rains come, I guess I won't be able to find work again. I don't like to have to get help from welfare. I want my self respect. I need unemployment insurance before the rains come so that I can have enough to give food and shelter to my eight children."

--ANTONIO DORADO, farm worker, Castroville

Every major occupational group but farm workers is covered by unemployment insurance. CRLA has a pending case seeking to provide this basic protection to every American farm worker.

"The government has a lot of programs, like the War on Poverty. I do believe that they are going wrong because they are trying to cure poverty without getting rid of the thing that causes poverty. Can you see what I mean? Like you're trying to cure cancer with an aspirin. I think that one of the biggest problems is we got to take into consideration the people as a people, and we should try to teach the people their rights as a human being."

--HECTOR REYES, community organizer, El Centro

Most Federally-funded programs perpetuate dependence rather than encourage independence. Although most of CRLA's cases are service-oriented and designed solely to treat the symptoms of poverty, a number of its class action cases seek to deal with the causes of poverty. In addition, it has helped design various farm worker controlled corporations to produce housing and jobs.

CHARACTERISTIC PROBLEMS ENCOUNTERED BY CRLA...

RURAL POOR NEED BETTER EDUCATIONAL OPPORTUNITIES.

COLLEGE FOR FARM WORKERS In Gonzales, California, in a school district with a 50% student enrollment of Mexican descent, a young Mexican-American National Teacher Corps teacher was fired, and her husband's job as a school-home liaison representative eliminated, when she helped local high school students form a chapter of the Mexican-American Youth Association (MAYA). The primary function of MAYA was to encourage in Mexican-American students a pride in their cultural heritage, and to stimulate interest in further education among some who previously had accepted farm work as an end in itself. In part, the program attempted to awaken the students' interest in professional careers, such as medicine and law, and at least to encourage them to secure their high school diplomas. As a result of this dual emphasis, farm worker parents, who had always assumed that their children would be farm workers by the age of 17, began to encourage them to apply for college. A record number of Mexican-American students (35) thereafter applied under special minority-group programs at several local colleges. CRLA, after failing to convince the local school board to reinstate the fired teachers, was successful in securing a Federal Court order of temporary reinstatement.

(Alvarez v. Force, U. S. District Court for Northern California, No. 51089) CRLA was joined in this suit by the Mexican-American Legal Defense and Education Fund.

EQUAL EDUCATION FOR RURAL POOR Although an equal education for all children is guaranteed by California's Constitution, local taxpayers are forced to absorb 70% of the costs of this state-guaranteed education without regard to their financial ability. Beverly Hills taxpayers, therefore, are able to provide their children with free musical instruments, intensive medical and psychiatric care, and remedial education, while rural taxpayers do not even have sufficient funds to secure an adequate number of teachers or to provide children with school transportation even when they reside three hours walking distance (10 miles) from the school. CRLA filed suit to alter this by requiring a more equitable rate of taxation and distribution of such sums throughout the state. However, as the result of a recent U. S. Supreme Court case, it dismissed its lawsuit without achieving the desired result. The Governor of California has recently proposed a plan whereby some of these tax inequities will be eliminated.

(Silva v. Atascadero, California Superior Court, San Francisco County, No. 595954)

CHARACTERISTIC PROBLEMS ENCOUNTERED BY CRLA...

EDUCATIONAL OPPORTUNITIES *(continued)*

MAJORITY California school children are denied adequate school
RULE ON facilities unless their parents can convince two-thirds
SCHOOL of the voters in the school district to approve such
FACILITIES facilities. As a result of this requirement, the will
 of the majority of voters favoring additional school
facilities has been frustrated in 155 out of 218 instances in the last
two years. In reliance on the Supreme Court's "one man, one vote"
principle, CRLA has brought suit seeking to prevent a small minority
from frustrating the educational needs as determined by the majority.

*(Larez v. Shannon, California Superior Court, Sutter
County, No. 2657)*

CHARACTERISTIC PROBLEMS ENCOUNTERED BY CRLA...

FARM WORKER FAILURE TO PARTICIPATE IN THE COMMUNITY

STEMS FROM A LACK OF STABLE, ADEQUATE EMPLOYMENT.

UNEMPLOYMENT INSURANCE Every major occupational group in the United States is covered by unemployment insurance benefits with the exception of one: farm workers. A combination of Federal and State legislation precludes one of America's poorest and most seasonal occupational groups from these benefits.

As a result of a CRLA lawsuit, a three-judge Federal Court is presently considering whether to declare that exclusion unconstitutional and order unemployment benefit coverage for farm workers. Should the Court so order, farm workers throughout the United States could receive approximately \$250 million dollars per annum, and hundreds of thousands of them would be removed from dependence upon welfare assistance. Most important, job security would partially eliminate the need to be migratory, thereby keeping children in school throughout the year, and encouraging their parents to become involved in community affairs.

(Romero v. Wirtz, U. S. District Court for Northern California, No. 50213)

ILLEGAL FOREIGN COMPETITION Virtually every occupational group has restrictions, either by statute or professional code, on the number of persons who can practice their occupation. Farm workers are not only denied such benefits, but are faced with a continuous supply of cheap foreign labor competition.

A number of CRLA lawsuits have sought to prevent illegal and unfair foreign competition without obstructing growers from securing an adequate supply of labor. Until CRLA brought a successful lawsuit on September 8, 1967, hundreds of thousands of foreign laborers (braceros) had been imported into California each year to compete with local farm workers. As a result, American citizens were forced upon welfare and deprived of work. Subsequent to CRLA's success in Federal Court, the U. S. Department of Labor on September 11, 1967, entered into a formal agreement with CRLA in which for the first time domestic farm workers were given a voice in determining future farm labor policies. Thus, in 1968 for the first time in 25 years, the U. S. Secretary of Labor announced that no foreign workers (braceros) would be imported into the United States. It is estimated that this decision provided \$3 million dollars in additional income for local farm workers, a minimum of \$1 million dollars in additional income to local merchants, and a \$750 thousand dollar savings to local welfare departments.

(Alaniz v. Wirtz, U. S. District Court for Northern California, No. 47807)

CHARACTERISTIC PROBLEMS ENCOUNTERED BY CRLA...

ADEQUATE EMPLOYMENT (continued)

WORKING CONDITIONS In 1965, California passed legislation which for the first time protected the farm worker's health and safety. Because of the inability of the appropriate government agencies to enforce the law, farm workers were compelled to go to court in a series of suits seeking what the law ordered: toilets, handwashing facilities, and drinking water for farm workers. As of the summer of 1969, neither the law of four years before, nor the conditions that the law sought to improve, had substantially changed.

(Munriquez v. Mosesian, California Superior Court, Kern County, No. 105175; Garcia v. Kovaceirch, California Superior Court, Kern County, No. 105072; Perez v. Morales, California Superior Court, Stanislaus County, No. 100602)

CHARACTERISTIC PROBLEMS ENCOUNTERED BY CRLA...

BOTH LOCAL COMMUNITIES AND THE POOR
ARE OFTEN IGNORED BY BIG GOVERNMENT.

FOOD Congress has provided two Federal food programs to assist
 FOR THE the poor: the Food Stamp and the (surplus) Commodity
 HUNGRY Distribution programs. As of December, 1968, 16 of
 California's 58 counties had refused to institute such
 programs. CRLA secured an injunction, before a three-
 judge Federal Court, to compel the U. S. Secretary of Agriculture to
 institute Federal food programs in each of these counties. On June 2,
 1969, State Superintendent of Schools Max Rafferty joined CRLA in con-
 tending that the U. S. Secretary of Agriculture was discriminating
 against poor people and violating President Nixon's mandate that all
 hungry persons be afforded an opportunity for a minimal adequate diet.
 The State of California joined CRLA in this action primarily because
 the U. S. Secretary of Agriculture ignored the law and refused to comply
 with a binding Court Order to make food available for hungry persons in
 every California county. By the summer of 1969, California became the
 first large state in which every county was operating a Federal food
 program - CRLA, therefore, voluntarily dismissed its suit.

*(Hernandez v. Hardin, U. S. District Court for
 Northern California, No. 50333)*

FEDERAL Perhaps the most striking example of the Federal Govern-
 GOVERNMENT ment's failure to be responsive to the needs of the states,
 ENCOURAGES local communities, and the poor, is a CRLA case presently
 FATHERS before a three-judge Federal Court seeking to abolish the
 NOT TO WORK "Don't Work" rule, a Federal welfare rule which discourages
 fathers from seeking employment and encourages them to
 desert their families. (Fathers can secure assistance for their children
 only if they refuse to work or desert their families.) U. S. Housing,
 Education and Welfare Secretary Robert H. Finch is at least equally
 concerned, and has submitted certain proposals to the President which
 could achieve legislatively the results CRLA seeks in its lawsuit.

*(Macias v. Finch, U. S. District Court for Northern
 California, No. 50956)*

CHARACTERISTIC PROBLEMS ENCOUNTERED BY CRLA...

GOVERNMENT (continued)

DIVORCE The Federal welfare structure encourages divorces, and
 OR frequently makes assistance for children dependent on the
 DEPRIVATION securing of a divorce without regard to the desires of
 WELFARE RULE the parents. Presently pending before a Federal three-
 judge Court is a CRLA action seeking to abolish this
 "Divorce or Deprivation" rule, which annually destroys thousands of
 California marriages and compels a similarly high number of persons to
 file fraudulent divorce proceedings. A preliminary order on behalf of
 the clients has been issued in this case.

*(Jenisch v. State of California, U. S. District Court
 for Northern California, No. 48462)*

The "Divorce or Deprivation" case is presently before the three-judge
 Federal Court as a result of a prior CRLA case which was the first
 successful Legal Services case ever brought before the U. S. Supreme
 Court.

*(Damico v. State of California, U. S. Supreme Court,
 No. 629 misc., Oct. term, 1967)*

CHARACTERISTIC PROBLEMS ENCOUNTERED BY CRLA...THE POOR NEED TO BE ABLE TO SPEAK FOR THEMSELVES,NOT TO DEPEND UPON OTHERS TO DO SO.THE RIGHT
TO VOTE

Only one major group in America is denied the right to vote: the American of Mexican ancestry who is literate only in Spanish. As the result of special Congressional legislation, even illiterates are permitted to vote in certain states. In addition, Americans of Puerto Rican ancestry, despite being literate only in Spanish, are permitted to vote in most states. The irony and the irrationality of this is graphically illustrated in California. Despite the State's long and uniquely rich Spanish-Mexican heritage, and its 11% Spanish-surnamed population, Spanish literacy has not been sufficient as a basis for eligibility at the polls. The result of this inequitable exclusion has been an increasing loss of interest in community affairs by a group that helped write the California Constitution (in both Spanish and English) and which continued to be a real part of the California community until recent decades when the California Constitution was changed. CRLA presently has before the District Court of Appeals in California a case contending that it is unconstitutional to discriminate against persons who are literate in Spanish, especially since a large number of Spanish-language newspapers and radio stations serve these people. U. S. Attorney General John Mitchell recently suggested legislation (nation-wide abolition of literacy tests) that might achieve the same result.

(Castro v. State of California, California Court of Appeals, No. 33529)

WATER
IN THE
DESERT

Imperial County lies at the southeast corner of California. It is part of the Colorado Desert, one of the most geologically arid regions in North America. The Imperial Irrigation District, through its control of waters from the Colorado River, has made this land into the fifth most productive agricultural county in the United States. On the other hand, it still has one of the highest percentages of poor anywhere in California. This paradox has occurred partially as a result of the Irrigation District charging abnormally low water rates to the grower and unusually high rates to the consumer. The Irrigation District has been successful in continuing this inequitable system solely because it has been unconstitutionally apportioned. The voters residing in districts serving growers have 5 times more voting power than their numbers would justify. As a result, CRLA, on behalf of Imperial County consumers, has brought suit to compel the Irrigation District to permit majority rule. The case was on appeal at the beginning of summer, 1969.

(Girth v. Thompson, California Superior Court, Imperial County, No. 40096)

CHARACTERISTIC PROBLEMS ENCOUNTERED BY CRLA...POOR TO SPEAK FOR THEMSELVES (continued)

RIGHT TO
FREEDOM OF
ASSOCIATION

Federal law guarantees to every major occupational group except farm workers the right to join a labor union. California is one of the few states that does protect farm workers. It prohibits employers from firing any worker, including a farm worker, merely for exercising his freedom of association by joining a labor union. Some growers have recently commenced to negotiate with such farm worker unions. On the other hand, at least a few growers have not only refused to negotiate with farm worker unions, but have proceeded to summarily fire workers who have exercised their legislatively-protected right to join a labor union. In one case, 9 skilled farm workers were fired when their employer discovered that they had joined the United Farm Workers Organizing Committee, AFL-CIO. CRLA filed a lawsuit on their behalf, and within four months the men were rehired and a full settlement was reached. As part of the settlement the farm workers were guaranteed a minimum annual salary of \$4,500, protected from future firing by an arbitration clause, and their rights to join a labor union were fully recognized.

(Wetherton v. Martin Produce, California Superior Court, Monterey County, No. 63696)

WHAT CRLA IS . . .

HISTORY

California Rural Legal Assistance is a statewide law firm, funded by the Office of Economic Opportunity to provide free legal services to many of California's rural poor. It was the first OEO program designed to assist farm workers, and its initial funding in June of 1966 in the amount of \$1.276 million dollars represented the largest grant ever made by the OEO office.

During the first year of its existence, its central administrative office was established in Los Angeles, with nine regional law offices throughout the state. Despite often strong political pressures, the program has been refunded each year since. For two years, CRLA also maintained a special office to represent Indians in their peculiarly Indian problems. Recognizing the enormity and the uniqueness of these problems, CRLA was successful in securing independent funding for a program to exclusively serve Indians - "California Indian Legal Services."

In 1968, the central office was moved from Los Angeles to San Francisco as an efficiency-economy measure. As a result, the central office was placed substantially closer to a majority of the clients served by CRLA's nine regional offices and to the agencies and courts where most of their problems are sought to be resolved. An office was also opened in Sacramento to conduct an advocacy and legislative information program which would serve administrative agencies, the Legislature, and other rule-making bodies on issues affecting CRLA's client community.

In the same year, the firm was named the outstanding Legal Services Program in the nation by the Office of Economic Opportunity's National Advisory Committee for Legal Services *"for its service to the cause of justice for the poor, through innovation, law reform, legislative work, and test cases."*

ORGANIZATION

Legal services are most effective in rural areas if they are provided on a statewide basis. This is true, partly because in the sparsely populated regions of the state there is often no single county with a population large enough to support a program of its own. It is also true because clients are frequently compelled by their work to migrate from one area of the state to another, repeatedly crossing county lines, and thus losing touch with attorneys whose operations are restricted by jurisdictional boundaries. A statewide organization provides a unique opportunity for correlation of activities for maximum efficiency, and for specialization in problems of particular concern to the rural population.

The CRLA staff, statewide, consists of approximately 120 persons, of whom about 40 are attorneys and 25 are liaisons with the local community (investigators, community workers), plus appropriate secretarial and clerical staff. The central office coordinates legal and agency matters throughout the state and houses the administrative staff for the entire organization.

CASELOAD AND COSTS

During the calendar year, July 1, 1967, to June 30, 1968, CRLA accepted 10,351 new cases. Despite this average of 1,000 new cases per office, the median number of open cases per office was less than 150, indicating that there was a reasonably rapid resolution of the majority of the cases. Approximately 85% of CRLA's cases have been and continue to be conventional "service" cases - such as adoptions, wage attachments, and used car problems.

According to the monthly reports of CRLA regional offices, 25,877 clients were directly benefitted by these cases during the same calendar year, with indirect benefits being extended to as many as one million more persons because of the statewide effects of some of the cases handled.

The average cost per case during the same time span was under \$100 (\$96.26). This low cost was partially attributable to CRLA's low attorney-per-hour costs - \$10.93 including overhead per hour as compared with a minimum of \$25 per hour for associate attorneys in most California law firms. It is estimated that CRLA annually has produced income, or secured savings, to the California taxpayer in an amount in excess of one hundred times its yearly appropriation.*

* For example, \$9 million per annum saved by the elimination of county subsidies to landlords, Phillips v. Davenport, California Superior Court, Monterey County, No. 64125; \$3 million generated in income in 1968 through restrictions on foreign workers, Alaniz v. Wirtz, U. S. District Court for Northern California, No. 47807; \$250 million saved in 1968 by the suit to prevent Medi-Cal cuts, Morris v. Williams, California Supreme Court, No. SAC-7817; and \$10 million per annum saved by the food stamp case, Hernandez v. Hardin, U. S. District Court for Northern California, No. 50333. On the other hand, CRLA's annual budget is only \$1½ million dollars.

PHILOSOPHY OF SERVICE

Since its inception, the philosophy of CRLA has been to provide to the poor the same high quality of service that the wealthy client would expect from the law firm representing his interests. The poor, like the rich, are entitled to good lawyers who take the time to serve their needs. Just as the best large law firm represents business associations and groups of wealthy clients, because those groups have similar interests, so CRLA has acted as "house counsel" for groups of poor people. The problems which a poor person faces are not just his individual problems; all too often they are problems common to all the poor.

The wealthy have traditionally used the lawyer as an adviser - on what is best regarding his business, on what is best regarding his children's education, and on what is best regarding his employees. CRLA attorneys have attempted to be that type of resource for the poor - to advise regarding schools, jobs, housing and government. Those clients which CRLA has been able to serve, for it is only able to serve a fraction of those who need its services, have come to see the law as a vehicle for their betterment.

Poverty often brings despair and cynicism toward the possibility of change, individual and collective, through the legal order. The philosophy of CRLA has been and is that the poor, when served by vigorous, competent and high-minded lawyers, can have hope amidst poverty. Our short history confirms that this philosophy works.

LOCATION OF OFFICESCENTRAL OFFICE

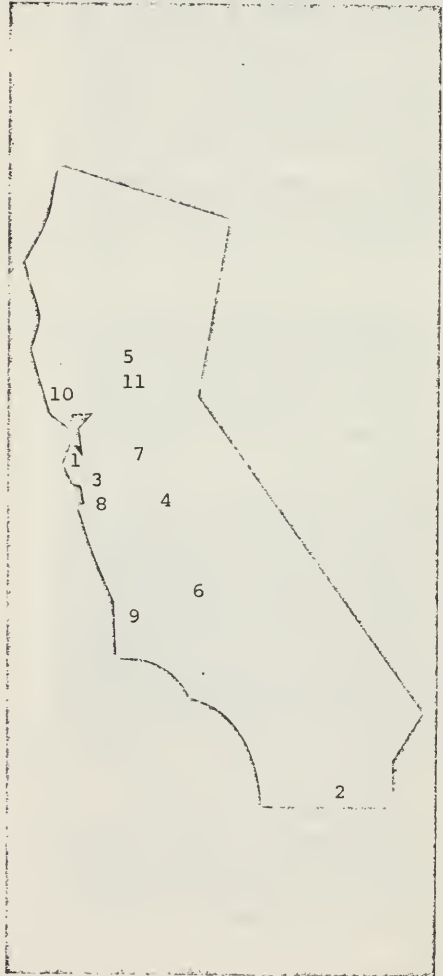
1. San Francisco
1212 Market Street
(415) 863-4911

LEGISLATIVE OFFICE

11. Sacramento
901 "F" Street
(916) 446-7901

REGIONAL OFFICES

2. El Centro
Professional Building
Fifth and Main Streets
Room 228
(714) 353-0220
3. Gilroy
22 Martin Street
(408) 842-8271
4. Madera
529 South "D" Street
(209) 674-5671
5. Marysville
116 7th Street
(916) 742-5191
6. McFarland
335 Perkins Street
(805) 792-2157
7. Modesto
405 "H" Street
(209) 529-8452
8. Salinas
328 Cayuga
(408) 424-2201
9. Santa Maria
109 East Cook
(P. O. Box 425)
(805) 922-4563
10. Santa Rosa
1049 4th Street
(P. O. Box 879)
(707) 545-4610



Working With the "System": The Progress of United Farm Workers (Obreros-Unidos) Under Wisconsin Law

David Loeffler

Attorney at Law

Milwaukee

"It is really not so bad to be a Migrant, if you can earn a decent life from it and if that is what you really want to do. It is no worse than being a plumber or a carpenter. The trouble is that my people have no choice. We want to give them a chance to be plumbers if they want to be plumbers, or carpenters if they want to be carpenters, or migrants if they want to be migrants, and have a decent life no matter what they choose, just like you or me."

Statement of Jesus Salas in Backes, "The Migrant's Union Comes to Pickle Country," *Chicago Tribune Sunday Magazine*, October 20, 1968, p. 37.

Traditionally, American trade unions have been concerned with only a "piece" of a worker's life. The Unions have attempted to improve the worker's compensation, shorten his hours, secure his job, and improve the qualitative aspects of the work situation. The employee's general life circumstances are considered only in terms of impact upon the work place. Recently, a new kind of labor organization has come on the scene. Loosely labeled "community unions," they reverse the focus of the traditional labor organization.

More analogous to a Civil Rights organization, the community union is concerned with the total life space of its member. His job is seen as only one dimension of his existence. Self-determination, through direct action and active member participation in such action, is the basic theme of the organization, as contrasted to the goal of "more" in the quantitative sense—the basic objective of most traditional trade unions. The community union wants to win "souls" over and above a "seven cents increase" in wages.

Not surprisingly, the membership of such community unions is primarily black, Mexican-American, or Puerto Rican. While the member's job is not an unimportant consideration for the community union leadership, it is not *more* significant than the whole set

of relationships between the person and the wider community, relationships which can be characterized as political, i.e., the police, "welfare," and all layers of government. The leadership of such unions is racially and ethnically indigenous, and tends to be more ideological than traditional trade union leadership. "Confrontation" with the "power structure" is the basic tactic.

Perhaps the most prominent community union is the United Farm Workers Organizing Committee (AFL-CIO) directed by Cesar Chavez. Although most of its activity has been in California and Texas, it has a Wisconsin affiliate, Obreros-Unidos (United Workers) directed by Jesus and Manuel Salas and staffed by a group of college students and recent college graduates, who could be accurately described as more or less New Left or "Movement" people in their general political and social stance. The constituency for Obreros-Unidos is the Texas based, Mexican-American migrant laborer.

The work places for these persons are cucumber and potato fields in Central Wisconsin, primarily Waushara and Portage Counties, and food processing plants throughout Central and Southeastern Wisconsin. Because affirmative legal tools are not available to field employees, either under federal law or the law of Texas and California, the parent organization, UFOC (AFL-CIO), has had to rely exclusively upon direct economic action, either strikes or product boycotts to achieve job-related goals. The Wisconsin group, on the other hand, has found itself in a unique legal context.

In Wisconsin, employee efforts at self-determination through unionism are regulated by a comprehensive labor code nearly identical to the federal National Labor Relations Act. A significant difference between the National Labor Relations Act and the Wisconsin Peace Act confers advantages upon migrant field laborers who are employed by Wisconsin employers. While the National Act expressly excludes field agricultural laborers

from its coverage, the Wisconsin Act does not. The Wisconsin Employment Relations Commission has affirmatively held that field agricultural workers are covered by the provisions of the Wisconsin Act.

Additionally, the minimum wage statutes in Wisconsin are applicable to women and minor children engaged in agricultural harvesting labor. The federal minimum wage law has been applicable to all harvesting employees only since February 1, 1967. Currently, in Wisconsin, the minimum wage for women and minor children over 18 is \$1.30 per hour and \$1.10 per hour for minors 17-12. The federal minimum for harvesting employees is a flat \$1.15 per hour.

Although Obreros-Unidos follows the community union pattern of attempting to organize the "whole" man, the Union's significant contact with the legal system came in its efforts to obtain self-determination in the economic market place.

Before discussing the particular cases in some detail, it is useful to have some sense of the migrant laborers' economic position in our capitalist market economy. The annual income for the migrant farm laborer is below the poverty line—in 1966 an average total wage income of \$1,500 of which \$1,046 derived from farm work and \$534 from non-farm work.¹ The migrant farm workers' low income is a function of the operation of classical supply and demand forces. Because of increasing mechanization, the demand for agricultural labor has dropped 54% in the period 1947 to 1965.² The supply of migrant labor has remained constant throughout this period. Because of low educational attainments, the migrant worker cannot find alternative employment in industries requiring a skilled work force. Alternative employment opportunities in Texas are concentrated in electronics, chemicals, oils, steel machine tools, aircraft and construction—industries demanding predominantly skilled labor.³ Since the median years of school completed for migrants in 1967 was 7.9 years compared

with 12.2 for the labor force as a whole, the migrant worker finds himself locked into the migrant stream.⁴ These factors, combined with overt prejudice in hiring practices, result in an adjusted unemployment rate for all farm workers in 1966 of 6.5%.⁵ With supply far in excess of demand, the "price" of the labor commodity is inevitably depressed.

Moreover, in Wisconsin there are a limited number of organized "purchasers" of migrant farm labor. The dominant "buyers" are large scale food processors—Libby McNeill & Libby, Dean Foods, and Hawthorn-Mellody. The "on-the-scene" Wisconsin companies such as Green Bay Foods, or Chicago Pickle are in effect, subsidiaries of these larger processors. The individual farmers and growers are from an economic point of view little more than *rentiers* who make their land available to the large processing companies on terms dictated by the latter. Since the processors are motivated by a desire to maximize their profit, they take full advantage of the "sellers" labor market so as to minimize their labor costs. Obreros-Unidos is attempting to offset this balance of power through the traditional devices of the trade union—the threat of strike, a labor agreement controlling the labor supply through the use of a union-run hiring hall, job security through various provisions of the labor contract. Beginning in 1967, the Union looked to the law primarily as an affirmative weapon.

In the summer of 1967, the Union successfully organized the hand harvesting em-

1. "The Migratory Farm Worker," *Monthly Labor Review*, June 1968, p. 11 (The *Monthly Labor Review* is the official publication of the Bureau of Labor Statistics of the U.S. Department of Labor.)

2. Erenburg, Mark, "Obreros-Unidos in Wisconsin," *Monthly Labor Review*, June 1958, p. 18.

3. U.S. Department of Agriculture, Economic Research Service, "The Farm Labor Situation in Selected States, 1935-1966, *Agricultural Economic Report*, 110: 12, April, 1967.

4. Erenburg, op. cit., p. 19.

5. Senate Subcommittee on Migratory Labor, Senate Report No. 1006, 90th. Congress, 2d. Session, p. 47.

ployees of Libby McNeill & Libby. Obreros-Unidos filed a representation petition with the Wisconsin Employment Relations Commission seeking an election among these persons to determine whether they wanted to unionize. At a hearing to define the dimensions of the electorate, the employer denied that any of these persons were employees. The Company maintained that they were really employees of the farmers who owned the cucumber fields. The Employment Relations Commission rejected this contention, finding that Libby recruited the workers, determined their wages, and effectively decreed the manner of work. The Wisconsin Employment Relations Commission ordered an election among the 650 eligible employees which the Union won handily, 405 to 8. Because the election was held at the end of a harvest season, many eligible employees had left Waushara County before election day. With the Union's election victory, the employer was under a legal obligation to meet and negotiate a labor agreement. The entire transaction was a legal first. No employer of field laborers had ever been legally obligated to deal with their labor organization.

Libby and the Union commenced negotiations. After several meetings in September and October of 1967 the employer announced that he was terminating negotiations. Libby had decided to replace the hand harvesters with mechanical cucumber pickers. In the employer's view it no longer had any employees; therefore, there was nothing to negotiate.

The Union filed unfair labor practice charges with the Wisconsin Employment Relations Commission. The Union claimed (1) that the change from hand to mechanical harvesting was motivated in large part by a desire to avoid doing any business with the Union (2) regardless of the employer's motivation, he was under an obligation to discuss the decision to mechanize with the Union before it became a *fait accompli* and further, the employer was obliged to discuss the

economic and social impact of such a decision upon the employees represented by the Union. The matter went to trial before a Commission hearing examiner in January of 1968. The Union offered substantial economic and horticultural evidence to demonstrate that the decision to go to machine harvesting was not economically justified, even accepting the employer's goal of maximization of profit. The inference to be drawn was that the employer was willing to run extraordinary economic risks simply to be rid of the Union. Additionally, the Union offered evidence to support its claim that the employees never meaningfully participated in the decision to destroy their jobs. In June of 1968, the Commission rendered its decision. It rejected the Union claim that the change in methods was designed to eliminate unionism. However, the Commission did find that Libby had violated the state law by failing to negotiate the decision to mechanize before its accomplishment, and by further failing to meaningfully negotiate the economic impact of that decision upon the affected employees. The Union had argued that the only effective remedy for this failure to negotiate the decision to close was the payment of a certain base level of severance pay and an order to negotiate on an increment above that base. With the workers dispersed and the operation being performed mechanically, the Union had no economic leverage to compel meaningful severance pay through threat of economic reprisal. Additionally, the Union requested that the displaced workers be given factory jobs in the Libby processing plants in this state, as job openings arose. The Commission refused to grant any severance pay. It did, however, order the employer to at least negotiate on means of lessening the impact of its decision to close, and ordered the employer to give the displaced workers preferential hiring advantages in its existing processing operations. The employer has appealed the decision of the Commission to the Circuit Court in Waushara County and will

presumably continue to appeal to the Wisconsin Supreme Court if rebuffed. The Union has taken advantage of the employer's appeal to ask the Courts to review the Commission's refusal to grant a minimum base of severance pay. At least for the time being, the Union has established the principle that migrant workers have a right to participate in the decisions which might destroy their livelihood in this state. It represents a first step toward the goal of self-determination.

The second major lawsuit involved a confrontation with the Department of Industry, Labor & Human Relations, a state government agency, legally charged with the duty of protecting the migrant worker's economic interests through enforcement of the state minimum wage law. As noted above, the law obliges an employer of women and minor children to pay them a "Living Wage." Under the statute, "Living Wage" is defined in terms of a level of income designed to permit the covered person to "maintain himself or herself under conditions consistent with his or her welfare." The employer is to pay "any woman or minor employee" a wage adequate to generate this level of income. The statute goes on to state that the mode of payment may be an hourly rate, salary, or a piece rate.

Under the statutory structure, the Department of Industry, Labor & Human Relations has the power to quantify the "Living Wage" and determine the mode of payment. Pursuant to this power, in December of 1967, and in anticipation of the 1968 growing season, the Commission decreed that women and minors over 18 engaged in agricultural labor should receive \$1.30 per hour while minors from 17-12 should receive \$1.10 per hour. However, the Commission further ruled that the employer could compensate the employee by a piece rate and could establish various rates for varying grades of cucumbers. The sum of the various rates by grade was to equal \$2.32 CWT.

The Commission added a critical proviso. If 65% of the members of the class covered

by the statute earned \$1.39 per hour when their piece rate was translated into an hourly rate, then even though the remaining 35% of the class did not earn \$1.30 per hour under the piece rate, the employer was not obliged to make up the difference between their actual piece rate earnings and compensation at \$1.30 or \$1.10 per hour of work.

The Union commenced an action in the Circuit Court for Dane County to enjoin the enforcement of the 65% — 35% rule. The Union argued that under the statute each person employed in agricultural labor was entitled to at least \$1.30 or \$1.10 per hour regardless of his individual productivity. Again, the Union relied upon considerable economic evidence and data relating to the nature of the work process in cucumber harvesting to demonstrate that individual productivity was a matter quite beyond the control of a given worker. Worker productivity (that is to say, amount of cucumbers picked per unit of time), was a function of weather and the employer's cultivation methods. A fertilized, irrigated field was obviously going to yield more cucumbers per acre than one that was not cultivated by the best modern techniques. The total yield of the field of course provided the structure for individual productivity. Whether a given worker was assigned to fertile acreage was a matter wholly outside his control. The Department essentially argued that no employer should be compelled to pay wages in excess of the value of the worker's product. Of course, this is an argument against the very concept of a minimum wage. Additionally, the Department argued that "they" (the migrant workers) "liked" the piece rate system. To which the Union replied, "well and good, retain the piece rate system but oblige the employer to make up any difference between that rate and the level of income legislatively determined to be necessary to maintain oneself in minimal dignity." The Circuit Court agreed with the Union. It concluded that under the statute each person who worked at agricul-

tural labor was entitled to the minimum wage for each hour of labor. Moreover, the Court, Judge Norris Maloney, concluded that to pay persons similarly situated a different wage on the basis of factors over which they had no control was to deny them equal protection under the 14th Amendment of the U. S. Constitution. The final result then was that all persons employed in agricultural labor would receive at least the minimum wage, the employer being obliged to pay the difference between earnings under the piece rate and the statutory hourly minimum. Additionally, the employer was obliged to keep records of hours worked daily and weekly and wages earned under the piece rate, so that enforcement agencies could determine whether the minimum wage requirements had been satisfied. (It was never clearly explained how the Commission intended to ascertain whether 65% of the members of the class had made \$1.39 without records of hours worked or wages paid.)

Judge Maloney's decision was the Union's finest hour. Not only did the result guarantee the maximum amount of income for those employed under the system but more importantly, the affected people, through the mechanism of their Union, had checked the power of a state bureaucracy which was supposed to be on their side. The Union had done its thing. This action represented a major step toward the goal of self-determination for all concerned.

This past summer, the Union again used the legal process in several skirmishes with the employer. After complaints were filed, with the Employment Commission, employers voluntarily agreed to permit Union organizers access to migrant labor camps during non-working hours, and another employer agreed to reinstate several employees whom the Union claimed had been fired because they picketed a local supermarket in support of the National Farm Workers grape boycott.

Can the Union continue to use the system to achieve its goals? So far the answer is yes. The victories to date came in the Court, not in the street. The Union availed itself of various "establishment" services. Economists and Horticulturists from The University of Wisconsin testified in both the Libby and the Department of Industry trials. Extensive use of expert testimony is perhaps the salient feature of Obreros-Unidos litigation. Legal services were provided by the State AFL-CIO whose President, John Schmitt, gave out of deep and unflagging personal commitment. The direction in the Farm Workers Movement depends upon whether the legal system can develop new concepts and accommodate within traditional doctrine the Farm Workers demand for dignity, self-determination, and simple justice. Obreros-Unidos is willing to give the system a chance. Let us hope it can respond in kind.

REPORT OF THE PROJECT DIRECTOR

Camden Regional Legal Services, Inc.
Farm Worker Division

Number 4
October-December, 1969

Although a number of important cases are summarized herein, this report reflects an increasing emphasis within the Farm Worker Division on activities outside the traditional realm of case-by-case legal services. We firmly believe the nature of problems confronting seasonal farm workers dictates that significant legal effort be devoted to certain areas other than individual case representation. Also, of course, as the number of seasonal farm workers has greatly reduced during recent months, activities on their behalf have been increasingly devoted to broader issues confronting them.

CASES

Many routine situations of little general consequence here were handled during the last three months. These concerned motor vehicle violations, welfare problems, wage and workmen's compensation claims, and a myriad of administrative problems including everything from titles of automobiles to certificates of birth for children. Nonetheless certain cases deserve closer attention.

1. Criminal

Although the Division is prohibited from acting as counsel for those accused of indictable offenses, it can assume a vital role in protecting rights of seasonal farm workers in some criminal situations. Report No. 3 clearly documented the fact that farm

workers face serious disabilities upon arrest. Because of language differences and discrimination, not only are they usually uninformed of rights to counsel, typically they are placed under exceedingly high bail for relatively minor transgressions. The following cases continue documenting inequities of the criminal justice system as applied to seasonal farm workers; they also illustrate the role this Division can assume in attempting to combat them.

A. We noted in Report No. 3 (1.E., p.5) the plight of a Puerto Rican farm worker awaiting trial in Salem County Jail for atrocious assault and battery. He had already spent over five months in jail for lack of \$500 bail. Although our own investigation had strongly indicated self defense, and that witnesses for the prosecution would be difficult to produce, the Public Defender (assigned early in this case) had not yet even made his presence known to the defendant. Until we prodded he had taken no action on his client's behalf. Quickly he concluded the worker should plead guilty; after having spent this long in jail, he probably would be freed. The worker, having now spent over five months in jail and apprised that in any event his trial would start within the next month, declined the offer. One month later charges were dismissed for lack of witnesses. Certainly steps might have been taken to facilitate dismissal of this case months earlier.

B. That informal methods of negotiation in criminal cases exist and are available to an attorney who is present shortly after arrest is clear from the next case. We were informed of a Puerto Rican farm worker charged with carrying a concealed weapon. After speaking with the man prior to his preliminary hearing in a municipal court in Gloucester County, we personally contacted the Prosecutor's Office rather than merely forward an application for the Public Defender.

We informed the Prosecutor of consitutional problems present here, i.e., an unreasonable search and seizure involving a shake-down and a failure to provide counsel. We noted the farmer employing the defendant had stated it was common for police to arrest a farm worker and incarcerate him without either informing him of his rights nor the farmer of his detention. Since the alleged offense involved no violence or theft, we received the impression that prosecution might be withdrawn. Charges against this man were dismissed three weeks later.

C. Unfortunately, the following situation did not come to our attention until subsequent to the release of the two black farm worker-defendants. It is another striking example of the ineffectiveness of local systems of criminal justice as applied to seasonal farm workers:

1. On September 1, 1969, the men were arrested in their camp and charged with robbery. On September 8, bail was set at \$200 each which they were unable to meet.
2. On September 15, they pled not guilty in a rural municipal court in Cumberland County, informing the court they were indigent and unable to afford private counsel. The judge postponed their preliminary hearing and instructed them they would shortly be given an application for appointment of a Public Defender.
3. On September 19, they received and completed the application.
4. On approximately October 15, an investigator for the Public Defender interviewed them and received their statements.
5. On December 8, they were again brought before the municipal judge where their case was dismissed for lack of prosecution.

The men were referred to the Farm Worker Division by an apologetic Public Defender who requested we assist them return to their winter homes in Florida. He stated that a county judge trying to clear out the jail prior to Christmas noticed the men were arrested on September 1 and had not yet received a preliminary hearing. We brought the case to the attention of SCOPE Farm Worker Division and emergency funds were secured for their return.

D. An interesting case illustrates the disinterest of local police when confronted with a situation in which a Puerto Rican farm worker is the complaining witness. The man was victim of an assault by two men in a bar in Vineland. The following day, we were informed that the police, who had taken the man to a hospital for treatment of cuts on the head, face and arms and who was still suffering chest, leg and back pains as a result of the fracas, had charged one of the assailants with simple assault and battery and the other with loud and abusive language.

An inquiry into the matter with the Vineland Police Department resulted in discussion with the two police officers concerned and the chief of police. The latter, of course, maintained that the charges made were satisfactory and that the municipal judge could always upgrade them. After extended discussion we convinced the authorities justice and our client would be better served by charging atrocious assault and battery, and that the judge could always down-grade the offense if so inclined. Predictably, after defendants received two postponements of their hearings, the worker was obligated to return to Puerto Rico and charges were dismissed.

E. Report No. 3 (1.F., p. 5) related the predicament of a Puerto Rican farm worker who had spent two months in Camden County Jail prior to being advised of rights to counsel or to receiving a preliminary hearing on charges of larceny of auto. We eventually

represented him at a municipal court hearing on four motor vehicle violations arising out of the same incident (he got drunk on July 4 and took a spin in the car of a visitor to the camp). A lengthier account would chronicle three more months of attempting to facilitate the disposition of this case in both Atlantic and Camden Counties. Again, the local system of justice as applied to seasonal farm workers resulted in grave injustice.

In short, the Public Defender of Atlantic County was unable to persuade the Prosecutor's Office to accept a plea under the joy riding statute. The latter would, of course, accept a plea to petty larceny, i.e., theft of a value under \$200. With little alternative after 5 months in jail, he pled guilty to the offense and was shortly thereafter sentenced to six months in jail, the final two weeks of which were suspended. We secured temporary lodging for him and, shortly thereafter, suitable housing and a job in a nearby area. The case is presently under review by a private attorney interested in bringing suit for the violations discussed.

2. Civil Rights Violation: Public Accommodations

Also noted in the previous report (4, p. 9) was an investigation into discriminatory practices of barber shops in Swedesboro. After a conciliation conference with one shop, the Division of Civil Rights of the Department of Public Safety of New Jersey informed us that a consent order and decree had been signed, and that the Farm Worker Division might take a future opportunity to insure that shop was complying with the order. In effect, the conciliation conference resulted in settlement without a full public hearing. The order and decree required that the owner immediately cease and desist from the proscribed acts and post notices of compliance within his shop.

We will conduct a subsequent investigation and refer all findings to the Division of Civil Rights. If a subsequent violation exists, the matter would be immediately removed to court and considered under normal judicial procedures pursuant to N.J.S.A. 10:5-17.

3. Administrative Discrimination: Salem County Migrant Health Program

We also noted in the prior report (8, p. 11) an incredible case of abuse of administrative responsibility on the part of the Salem County Migrant Health Program. The situation concerned lack of treatment afforded a seasonal farm worker couple over a three to four month period. Although the workers' problems are not yet completely resolved, the following represents a capsule summary of the situation to date.

A lengthy chronology would trace efforts of this office and the SCOPE Farm Worker Division to insure that SCMHP executed its responsibility. In short, during two months of attempting to gain assistance due this family, SCMHP forwarded the following excuses to justify refusals and delays in service:

1. The lack of migrant status (improperly determined),
2. The chronic condition of the ailment, later proven not chronic for the man, and still undetermined for the woman,
3. The lack of funds available to the program for care; and,
4. The contemplated change of residence of the family to Pennsylvania (Note that although SCMHP originally offered to provide a referral to Pennsylvania, the man stated that as of two months after we had originally notified Salem of this case, they still had received none).

During the last three months, we have devoted much effort to insuring that these workers, now residing in Pennsylvania, receive the proper attention they should have been afforded in New Jersey. Two weeks after SCMHP knew the couple's address in Pennsylvania, it did forward a copy of records to proper authorities in Pennsylvania. Although the Farm Worker Division has no jurisdiction to investigate the inadequacy of programs in Pennsylvania, we still assume a responsibility for securing medical assistance long deprived the family as a result of SCMHP's refusal to perform satisfactorily.

We will forward a complete documentation of the history of this situation to the New Jersey Department of Health. This will include demand upon it for proper recompensation to this couple, for an investigation into the activities of SCMHP, and for immediate placement of SCMHP under the direct supervision of the New Jersey Department of Health.

4. Breach of Contract

We recently commenced suit based on the following circumstances. Seven months ago a farm worker was involved in an accident in which his car sustained substantial damages. Shortly thereafter, he verbally contracted with defendant for repair within a reasonable time of all damage to his automobile for the sum of \$750. Approximately one month later, the worker signed a written embodiment of this contract stipulating that defendant would make repairs as he received successive payments. Thereafter, he paid defendant the sum of \$600 prior to commencement of this action and has been willing since to pay the remaining \$150 for completion of the repairs. However, defendant has performed only a small

portion of the repairs necessary, has delayed excessively in making these repairs, and now refuses to complete repairs without additional payments far in excess of the amount agreed upon.

Although the client has on several occasions demanded that defendant complete repairs or return the car, together with part of the money which he had advanced the defendant, defendant has steadfastly refused. Therefore, in a complaint attached to an order to show cause, plaintiff has requested the following relief:

1. That plaintiff be excused from performance of all obligations under the contract;
2. That defendant be ordered to return the automobile to plaintiff immediately, together with money defendant has received from plaintiff in excess of the reasonable value of repairs already made;
3. That plaintiff be granted judgment for damage he has sustained through deprivation of his rightful use and enjoyment of his automobile; and
4. That plaintiff be granted judgment for exemplary damages for defendant's malicious refusal to comply with the contract or return the automobile.

An interesting sidelight occurred when a Division attorney attempted to serve the order to show cause and complaint upon defendant. Defendant refused to accept the papers, placed them back in the inside pocket of the attorney's jacket, pushed the attorney and ordered him from the premises. Since plaintiff's attorney was duly authorized to serve these papers, he has filed two complaints for interference with service of process and obstruction of justice, both indictable offenses, against defendant.

He again served the papers with assistance from a state policeman who kindly consented to accompany him on this hazardous expedition. All actions in this case are pending.

5. Housing

A. In a case illustrative of problems of Puerto Rican farm worker families in the three counties, we assisted a family of 15, victims of a fire that destroyed the farm house in which they had resided for six years. The family was removed to a barracks-like structure which houses single male workers in the summer.

Together with the SCOPE Farm Worker Division, we immediately assisted them with emergency food and clothing and began inquiries concerning responsibility for the immediate and future housing of the family. We also took the family to Gloucester County Welfare. Welfare had denied assistance because it maintained there was no emergency, i.e., no catastrophe, although it had conducted no investigation. Therefore, since five of the thirteen children were already receiving Aid to Families with Dependent Children, Welfare maintained with some interesting reasoning, the other eight, although admittedly eligible, had to be processed under normal and much slower procedures. After considerable discussion, however, we convinced Welfare the situation was indeed a catastrophe, that the remaining children should be covered immediately.

Neither the Bureau of Migrant Labor nor the Gloucester County Health Department were effective in dealing with the housing situation. The Bureau recommended a few inconsequential corrections for the barracks while the Health Department maintained it could do nothing since the family was not a paying tenant. We are coordinating an attempt to secure suitable housing. Proceedings against the lessee-corporation-farmer for negligence resulting in the fire are being instituted by a private attorney.

B. While concerned with the situation described above, we also discovered in Gloucester County, a family of 15 living in a converted chicken coop. After assisting the family secure emergency medical attention for some of the children we discovered once more that not all those eligible were receiving welfare. This situation was immediately remedied.

Upon personally visiting the structure in which the family was existing, we immediately moved them and their few possessions to the Father Fitzgerald Memorial Center near Vineland. We are coordinating assistance to the family including a search for suitable housing.

PERSONNEL

A VISTA Volunteer, Norman R. Williams, joined the program in November. A graduate of Princeton University and Yale Law School, he was admitted to the New Jersey Bar in 1968 and has previously served as a VISTA lawyer with Western Idaho Legal Aid, in Caldwell Idaho. Among other responsibilities, he assisted staff attorneys with the daily case load, worked with a farm workers co-op, and conducted legal education classes. Western Idaho Legal Aid devoted much of its efforts to problems of Mexican-American farm workers in southwestern Idaho.

SOCIAL SERVICES

The Farm Worker Division continued its practice of offering comprehensive assistance to farm workers with legal problems. The importance of doing so has been confirmed by recent experience. State and local agencies are increasingly unresponsive to the needs of New Jersey's seasonal farm workers.

Witness the following examples of lack of commitment by various agencies to the welfare of their clients:

1. The Salem County Migrant Health Program refused over a period of three months to provide proper medical assistance to an elderly Puerto Rican couple. (See Cases, 3, p. 6).
2. The Gloucester County Office of the Bureau of Children's Services, a state agency supervising the welfare of various categories of underprivileged children, knew of 13 Puerto Rican children living in a converted chicken coop with no heat or water. Incredibly, although the agency had hospitalized children on two occasions with pneumonia, it returned them to the coop without assuming responsibility for either moving the family or prosecuting the owner of the dwelling. (See Cases, 5B., p. 10).
3. Gloucester County Welfare, aware of the same situation, refused to provide rent because the coop was unfit for human habitation. However, it knew the family was forced to pay \$125 a month out of its Aid to Dependant Children grant and allowed this to continue without assuming further responsibility.
4. Gloucester County Welfare refused to give additional financial assistance to another Puerto Rican family of 15 after it determined no "catastrophe" existed. Unfortunately, no one had investigated the labor camp to which the family was removed after its house burned down. (See Cases, 5A., p.9).
5. County Welfare offices provided AFDC to some children in families of Puerto Rican farm workers when others were also qualified, the excuse being the families never requested aid for the additional children.
6. The Vineland Adult Migrant Education Program refused to re-enroll a Puerto Rican farm worker after it had placed him in a job he

claimed he was medically unfit to carry out. The Program had not provided a medical examination.

7. A number of schools have not informed families of Puerto Rican farm workers that their children were eligible for free lunches although the school participated in that program; meanwhile, these children have not been eating since they could not afford it.
8. Many agencies have gratuitously suggested to Puerto Rican families in need of assistance that they return to Puerto Rico. Since efforts of these agencies are often inadequate, we doubt not their sincerity in encouraging families to leave during the winter. Perhaps next year they will provide air fare.

These, of course, are only representative of situations in the tri-county area. Although many agencies are becoming more defensive in their attitudes toward the Farm Worker Division, we will participate as much as possible with them in an attempt to maximize their effectiveness as well as our own.

We have increased contact with families remaining in the area during the winter. The heads of these families are crew leaders in summer, and the relationships established should increase our opportunities for providing legal services when workers arrive for the season.

We continue to coordinate our work with fieldworkers of the Farm Worker Division of SCOPE. Together we are accumulating, producing and distributing information of importance to seasonal farm workers and agencies having contact with them. We are meeting with health, welfare and education agencies trying to evaluate the effectiveness and adequacy of services currently available.

Presently, we are exploring the possibility of establishing a translation and transportation service. Since most social agencies in this area do not hire interpreters nor offer transportation to their clients they have traditionally depended on SCOPE

fieldworkers and increasingly on Legal Services staff. If persons could be recruited to provide these services, they might be paid by the agency served in each individual situation.

INTERDEPARTMENTAL CABINET COORDINATING
COMMITTEE ON SEASONAL FARM LABOR

As summarized in Report No. 3, Governor Richard J. Hughes issued, on January 13, 1969, Executive Order No. 49 creating an Interdepartmental Cabinet Coordinating Committee on Seasonal Farm Labor. This Committee was charged with a number of responsibilities culminating with preparation of a long-range plan for improving the condition of seasonal farm workers in New Jersey.

In answer to a letter written to the Commissioner of the Department of Community Affairs we were informed that Department was unaware of any reports or plans of the Committee. On October 29, we wrote directly to the Commissioner of the Department of Labor and Industry, the officer designated Chairman of the Committee. We registered our disappointment with the failure of this Committee to execute its responsibilities but nonetheless urged it to convene as quickly as possible.

On November 14, 1969, the Commissioner answered; unfortunately, his explanation was unresponsive. He cited us to a Committee on Farm Safety established for other purposes prior to the execution of the Executive Order, and suggested we discuss "any recommendations you might have to alleviate the plight of the migrant farm worker in New Jersey" with the Director of the Bureau of Migrant Labor (within the Department of Labor and Industry).

We wrote to him again on November 25 and again registered disappointment at the failure of this Committee to execute its

responsibilities. On December 2, we met with the Director of the Bureau of Migrant Labor, and requested that he urge his superiors to convene the Committee. Having received no answer to all of this by December 17, we wrote to the Governor-elect of the State of New Jersey apprising him of the situation and urging that he convene this Committee upon commencement of his administration. The Governor-elect's letter of December 23 stated that he looked forward to our "cooperation and advice in this matter."

This Division together with SCOPE has begun preparation of position papers on a number of issues affecting seasonal farm labor in New Jersey. We seek the opportunity to present these suggestions to the Interdepartmental Committee in the near future. These recommendations contain suggestions for legislation as well as for independent action within various executive departments.

LEGISLATION

Three separate bills affecting seasonal farm labor in New Jersey have been pending before the state legislature.

Assembly Bill No. 464 amends the Workmen's Compensation laws, making protection mandatory for employers of farm labor. Although all contract workers from Puerto Rico receive this protection under the contract and although most farmers maintain coverage as a matter of self protection, we believe the bill essential and important as a matter of public policy.

Assembly Bill No. 465 protects the right of persons in private employment to organize and bargain collectively by prohibiting unlawful interference with the exercise of these rights. Such interference shall be deemed a misdemeanor. The bill provides some small protection for the exercise of an existing Constitutional right (no state agency is authorized to enforce this right).

Assembly Bill No. 466 allows any occupant of a farm labor camp to have a reasonable right of visitation by persons of his own choice and in his own living quarters. The bill would prohibit interference with the exercise of this right.

In cooperation with the State Office of Legal Services, we communicated with a number of important legislators regarding the future of these bills. We were informed by all sources that only the Workmen's Compensation measure might pass at this time. We then communicated directly with leaders of the State Senate in order to bring to their attention factors supporting passage of the bill. As expected, at the final session of the Senate for 1969, Assembly Bill No. 464 was approved.

We anticipate greater activity in encouraging and supporting legislation improving the conditions of seasonal farm labor in 1970.

NEW JERSEY MIGRANT LABOR CODE

The Division undertook an examination of the New Jersey Seasonal Farm Labor Act and Regulations promulgated thereunder. From this, we received a more comprehensive understanding of the nature and goals of the Act and Regulations. With regard to labor camps, both documents are relatively comprehensive and problems here are more of vigorous enforcement of existing provisions rather than lack of comprehensive coverage. Perhaps the two most noteworthy changes in these documents for 1970 are mandatory provisions for flush toilets and increased space requirements per inhabitant.

The Act offers interesting suggestions for this Division's cooperation and communication with the Bureau of Migrant Labor. Apart from responsibilities with regard to the labor camps themselves

the Act lists a number of related areas in which the Bureau has jurisdiction, at times concurrently with other state and local agencies. It is here we might make concrete recommendations for increased activity within the Bureau.

For example, the Bureau has the power to enforce all labor laws, provide health and educational services, cooperate with State Police, build experimental camps, and assist with welfare problems of seasonal farm labor. The Bureau, however, has never taken much initiative in these additional areas of responsibility. Although one recent meeting with the Bureau was unproductive, we anticipate further communication with it under the new administration. We are particularly interested in accompanying Bureau inspectors to the farms for the dual purpose of posting notice of the Farm Worker Division and of acquainting our staff with the locations of all camps in the three-county area.

Both under the Act and in practice the Director of the Bureau is given primary consideration regarding proposed action affecting seasonal farm labor in New Jersey. For instance, in response to our first letter to the Commissioner of the Department of Labor and Industry, regarding a request that the Governor's Committee on Seasonal Farm Labor be convened, he referred us to the Director and requested we meet with him. We have also received this understanding from other State and local officials involved with farm worker problems.

CONTRACT BETWEEN GLASSBORO SERVICE ASSOCIATION AND PUERTO RICAN WORKERS

Approximately one-quarter to one-third of all seasonal farm workers in New Jersey are covered by an agreement with certain

employers. In southern New Jersey, the contract is negotiated between the Department of Labor of the Commonwealth of Puerto Rico on behalf of its citizens and the Glassboro Service Association, a division of the New Jersey Farm Bureau, acting on behalf of its grower members. Note that actual parties to this document are the individual workers and the Glassboro Service Association (and, in some instances, individual growers). Of course, the Commonwealth acts on behalf of the workers in administering the provisions of the contract.

The Division conducted an extensive analysis of the terms of the agreement culminating in two days of discussion with representatives of the Commonwealth. Again, as with the Seasonal Farm Labor Act, it is noteworthy that although many protections are included, actually benefit to the worker is essentially a question of adequate monitoring or enforcement of the contract. Although the Commonwealth reacts reasonably well when apprised of particular situations, limited resources restrict the scope of its active control.

The contract is interesting in another sense. It does provide a number of basic protections for farm workers absent at the state level. For example, it has long included Workmen's Compensation protection, and now contains minimum wage guarantees, provides for hospitalization and group insurance, and stipulates piece work rates; perhaps more importantly, it is administered by an agency having a strong interest in the welfare of its citizens. We have used and will continue to use resources of the Commonwealth office for purposes of obtaining assistance in situations involving contract workers.

BAIL PROJECT

Events of the past three months have substantiated our belief that New Jersey urgently requires a bail project for its seasonal farm workers. All too often unfamiliarity with the language and system of criminal justice, coupled with a lack of funds, has subjected workers to grave injustices.

Unfortunately, efforts to establish some type of project have met negative reaction. A representative of New Jersey OEO stated that creation of a bail fund would be difficult without built-in provisions for reform. He also noted most resources for the following year were already committed. He suggested we try to establish a VERA-type point system designed especially for seasonal farm workers.

Conversation with a bail expert at the VERA Foundation concerning adjustment of the traditional point system was also unproductive. Since the VERA system is approximately 90% geared to the nature and extent of community connections of a particular accused, we believed revision was necessary. VERA had no prior experience with farm workers and their representative was unable to offer workable suggestions for adjustment. He also believed creation of a special fund would be difficult without provision for actual reform of the system.

In a related matter, we will contact the Administrative Officer of the Courts and other state and local agencies. We hope to establish a system of communication between this Division and Law enforcement agencies and the courts. The objective: speedy and effective legal assistance for seasonal farm workers in New Jersey.

COOPERATIVES

Attempts at creating an effective cooperative buying club have not been as successful as anticipated. At present a Welfare Rights group (including many resident farm workers) which we have assisted has decided to forego a meat purchasing club; instead, it desires to take advantage of SCOPE's wholesale purchase plan for institutional foods (large cans, boxes of materials, etc.) for its day care centers. Hopefully, plugging the group into an existing program will enhance its chances of survival. Should the experience prove effective, the club might then direct itself to the more difficult task of bulk meat purchasing.

The idea of a buying club offers some escape from increasing costs and makes it possible to obtain quality food. However, in order to accept the concept of a cooperative, people must have a clear understanding of what it takes to make it work; this will result only from carefully planned explanations of the idea and its possible benefits.

We had to define our role. Were we to become organizers and devote much time to insuring that each group realized its potentialities, or were we to offer SCOPE centers our knowledge and skills while leaving the major burden of grass roots organization to them? We selected the latter.

Our involvement has been with two groups: the Spanish-speaking community of Vineland, and WRO units, mostly black, in the tri-county area. Regarding the Puerto Rican population, we quickly realized that although they pay more at the "little Spanish store," that store sells what they like, and its owner loans them money or provides them food they cannot otherwise

afford. The system is basically that simple; paternalistic, indeed, but it works. The buying club could not offer this particular group the food it wanted while at the same moment it portrayed the owner of the local store as a villain. As well, insufficient time has been devoted, leaving an impression the buying club concept has been rejected although actually no one has attempted to adjust it to the particular needs of this group.

Work with black groups has also proven cultural differences must be taken into consideration. Here we tended to depend even more heavily on organizers working with the groups. Although there was little clear understanding of the benefits of a food buying club, no one dared inquire until the organizers were ready. The latter then discovered they could not act, mainly because the people had finally arrived at their own conclusion that the club would not meet their needs. Thus, lack of communication and unresponsive plans have conspired to stall our earliest efforts.

HOUSING

During recent months problems of housing have become increasingly crucial for seasonal farm workers. Increasing scarcity of suitable housing for families attempting to withdraw from the migrant stream and lack of enforcement of local housing codes on behalf of resident farm workers have increasingly occupied our attention. We have assisted families purchasing homes and are presently representing families applying to Farmers Home Administration. To increase our knowledge in these areas, in November one staff member attended the Eastern States Conference on Housing Law sponsored by the National Institute for Education in Law and Poverty.

Another approach to these problems in which the Division has been actively participating is represented by the Tri-County Coordinating Committee on Housing formed in early November. With the SCOPE Farm Worker Division and SCOPE area centers we have discussed difficulties our clients confront in obtaining suitable housing. Although to date there has been only a few meetings, the Committee has begun to define problems and determine persons and agencies interested in finding common solutions to them. Tentative purposes of the Committee have been outlined to include collection of information of programs affecting housing, serving as a clearing house for other agencies with regard to housing problems, educating tenants concerning their rights and responsibilities, and using its group strength to influence various housing authorities and rental agents whose activities have an impact upon the solution of common problems. We will serve as a resource to this Committee and, while encouraging its activities in general, will attempt to insure that specific problems of seasonal farm workers are given adequate consideration.

CEDARVILLE COMMUNITY RECREATION ORGANIZATION, INC..

CCRO has now filed its exemption application with the U.S. Internal Revenue Service together with all necessary documents in connection with its original incorporation. The Division also prepared a document introducing the group and the nature of its activities for purposes of soliciting funds from persons, organizations and businesses in the Cedarville area.

Unfortunately, the local township has recently condemned the building in which the organization operates. CCRO has been allowed to remain on the premises until new accommodations are

secured, and the group has made a small down payment on land upon which it intends to self-construct new facilities in the near future. We are investigating the possibility of receiving future assistance under the Neighborhood Facilities Program of HUD.

[From the Evening Bulletin, Philadelphia, Dec. 18, 1969]

STATE LAWS SOUGHT TO IMPROVE LOT OF FARM LABOR

(By Freddie Boyle)

BRIDGETON—Officials of the local Camden Regional Legal Services office are planning to push for new state legislation and executive orders in 1970 that would improve conditions for farm workers.

The plans are being made by Max B. Rothman, director of the Farm Workers Division of Camden Regional Legal Services, an anti-poverty organization that assists the poor in Gloucester, Cumberland and Salem counties.

Rothman is planning his push in these directions:

—Urging introduction of a bill in the Legislature that would allow occupants of migrant labor camps to have visitors.

—Seeking amendment of state laws that would give every farm worker the same protection afforded Puerto Rican contract workers (wage guarantees, hospitalization, group health insurance and a representative to enforce workers' rights).

—Suggesting to Gov.-elect William T. Cahill that he establish an Interdepartmental Cabinet Coordinating Committee on seasonal farm workers' problems.

VISITING RIGHTS REJECTED

A bill that would allow occupants of migrant labor camps to have visitors was introduced in the Legislature this year, but did not pass.

Rothman said he has seen "over 100 migrant camps in the three counties that have 'no trespass' signs.

"If there is no one around when we get to the camps we go on the property anyway because we feel we have the right. On occasion, farmers have been around to question us. We tell them we are there in answer to particular requests for legal assistance or maybe to give the workers pamphlets explaining the rights of farm workers in New Jersey and tell them about our services.

"Most of the time the farmers let us go on the property. But on about three different occasions (one in each county we service) farmers have said they did not want me or members of my staff to go into the camps. They said the camps were on their property and they did not want us bothering their workers.

"BADGE OF SERVITUDE

"We maintain that as citizens these people have the right of visitation just as any other citizens does. Lack of these rights is a badge of servitude.

"The migrant camps are the last vestiges of company housing. It is the only place the workers have to stay in many cases," Rothman said.

On the subject of amending state laws, Rothman said many farm workers have peak periods when they make \$90 to \$100 a week but these periods are interspersed with slow times when they may earn as little as \$20 a week. He feels every farm worker, who works at least a month, should be given a contract which guarantees him a certain amount of work at a specified wage.

Last summer Puerto Rican contract workers were paid a minimum of \$1.55 an hour or paid on a piecework basis at not less than that figure. They also were guaranteed 160 hours of work over specified four-week periods; and were provided housing and other fringe benefits.

MINIMUM WAGE

The state minimum hourly wage for work is \$1.50. Rothman said he has talked to many non-contract farm workers who said they were paid \$1.50 an hour, or on a piece rate basis. They were paid only when they worked and were not guaranteed a certain number of weeks or months of work.

He said that even at \$1.55 an hour, a 40-hour work week brings in only \$62. Farm workers don't have to be paid higher rates for overtime, he said.

On the other hand, some growers say they have to pay their farm workers during slack periods whether they have work for them or not. If they didn't,

they say, the workers would leave and then would not have farm hands when it came time to harvest their next crop.

But Rothman maintains that he has seen many instances where this was not done for non-contract workers.

"The State law should be amended to be at least as strong for all workers as it is for Puerto Rican contract workers," Rothman said. "The protection should include wage guarantee, hospitalization, group health insurance and having someone represent the worker in enforcing the contract.

MINIMUM FOR CONTRACT

"I recommend that every seasonal farm worker who works at least one month should have a contract. Why couldn't there be a state council, as Governor Hughes' task force recommended, who would represent farm workers' interests in the same way the Commonwealth of Puerto Rico Labor Department represents Puerto Rican contract workers?"

Rothman said he also discovered last summer that some farmers promised bonuses to be paid at a future date. Then they fired the worker before the date arrived and told him he was not entitled to a bonus.

"As long as they were paying the minimum wage, the Wage and Hour Bureau of the Department of Labor and Industry could not do anything about it," he said.

QUESTIONS BUREAU STAND

On the subject of unemployment insurance for farm workers, Rothman said he felt the state Farm Bureau should support "this basic piece of social legislation afforded the average working man in the United States today. Why does the Farm Bureau continually come out against unemployment insurance?" he asked.

The law excludes farm workers from unemployment insurance. In addition, domestic workers and several other types of employees are not covered by the insurance.

On the subject of the shortage of local residents for farm work, Rothman said he feels more people are not interested in working on farms because it is hard work at what he considers low pay.

"Would you be interested in doing slave labor at the kind of pay they (farm workers) are receiving and being subject to the poor working conditions rampant on many farms in this state?" he asked.

He described "poor working conditions" as "long hours in the hot sun without coffee breaks and proper health facilities in the fields.

"The main point I'm trying to make is that farmers' flexibility in the labor market comes at the expense of the farm workers," Rothman said.

MORE BLAME ON STATE

But, he added, he blames the state more than he does the farmers for conditions. "People do not provide any more benefits than the state requires. That's why the state law should be amended."

Rothman said he plans to ask Gov.-elect Cahill what he plans to do about establishing an Interdepartmental Cabinet Coordinating Committee on Seasonal Farm Labor.

He recalled that Governor Hughes set up such a committee by executive order Jan. 13, 1969. Its purpose was to formulate long-range policy regarding seasonal farm workers' problems, review laws on farm laborers to see if they needed reform and to develop and coordinate farm-worker programs.

The committee was established after the Governor's Task Force on Migrant Labor indicated the need for improvements for farm workers. Members of the committee included the commissioner of labor and industry, chairman, the secretary of agriculture and commissioners of health, education, community affairs and institutions and agencies.

Rothman said he had written twice to Commissioner Raymond F. Male, of the Department of Labor and Industry about the work of the committee. Answer to the first letter referred him to a different committee. He said he has not received an answer to his second letter and believes the interdepartmental group never met.

[From the Evening Bulletin, Philadelphia, Dec. 17, 1969]

LAWYER SAYS STATE AND COUNTY LAWS, AGENCIES ARE INEFFECTIVE IN AIDING EXPLOITED FARM WORKERS

(By John G. Sandell)

WOODBURY.—State and county laws and agencies are ineffective in relieving the plight of exploited farm workers in Gloucester County, a representative of the Farm Worker Division of Camden Regional Legal Services has charged.

Max B. Rothman, a lawyer with the legal services group, said county and state agencies "keep passing the buck around as to who is responsible for protecting poverty-stricken farm workers from exploitation."

He cited the cases of two families brought to light last week as evidence of the failure of public agencies to meet the needs of people in difficulty.

IN CONVERTED CHICKEN COOP

"The family of Mrs. Luz Elena Astacia was found, when Mrs. Astacia applied for welfare, to be living in a converted chicken coop. They had no running water, and had to cross a muddy lot to get to a toilet, yet they were being charged \$25 per week rent. This is peonage, and the county must bear some of the responsibility for the continuation of such conditions," Rothman said.

Rothman also mentioned the family of Jose Rivera, who had worked for a farm and lived in a house there for five years. The house burned down Dec. 5, and the Riveras have been staying in a section of a cinder-block building used for migrant labor housing during the summer months.

"This dormitory does not have proper heating, cooking, or toilet facilities, and is too small for the Riveras' eight children and five grandchildren," Rothman said.

FAMILY COMPLAINED

The State Bureau of Migrant Labor would not inspect the farm last summer, Rothman said, "because the Rivera family were not migrants." The state did inspect the kitchen of the house because food for migrants was prepared there.

The family complained to the farm's management for about a month that something was wrong with the electrical wiring in the house, Rothman said. "And several days before the fire, they told the manager of smelling smoke. The management did some work on the heater, but the house caught fire the next day and left the family without a home," he said.

At the request of Camden Regional Legal Services, the migrant labor bureau inspected the structure the Riveras are temporarily occupying, on the same farm just to the rear of the burned-out house. Rothman said they found it to be substandard and ordered improvements, "but the family still has nothing to cook on but a hotplate and no adequate toilet or bathing facilities."

TIME UNCLEAR

He said it is not clear how much time the management has to improve the structure, "but actually, no amount of improvement would make it a proper place for those children."

The Gloucester County Health Department also declared the dormitory substandard, but said they can do nothing because the Riveras do not pay rent and therefore are not tenants, Rothman reported. "This condition is unconscionable," he said.

Rothman said the Gloucester County Welfare Department refused to grant assistance to the Rivera family Dec. 9 because they felt no emergency existed. They did grant assistance last Thursday, after representatives of his office and Southwest Citizens Organized to Eliminate Poverty (SCOPE) brought the family to welfare offices in Woodbury and challenged the welfare department's evaluation of what constitutes an emergency, he added.

COUNTY WORKERS HELP

"We can find no public agency which will take on the responsibility of getting this family out of this barracks-like building and into decent housing," Rothman said.

County welfare workers did help last week in trying to locate housing, but have no real power to do anything, Rothman said.

"The only public housing in all of Gloucester County is in Glassboro and that is limited to residents of the borough," he continued. "Why doesn't the Gloucester County Freeholder Board do both the farmers and the workers a service and provide decent housing in centralized facilities?" Rothman asked.

SOME SEEN AS HOSTILE

Certain welfare workers also displayed hostility to the Legal Service and SCOPE workers, "as though we were the ones who created the problem," Rothman said.

Rothman called the Rivera case "a classic example of exploitation of farm workers." He said the family had worked on the farm for more than five years, but when they complained of the wiring and the smell of smoke, the problem was not taken care of, and the house burned down.

"Then the resident manager explained he was allowing the family to remain on the premises temporarily but hoped they would be departing shortly," the lawyer added.

SECOND HOME TO BURN DOWN

The Rivera house with the second home on the land of the Betti-Jon Orchards in Monroe Township to burn down in less than a month. The farm is owned by Mrs. Margaret Hagan, of Monroe Township, and leased to Richter and Cochrane, of Charlotte, N.C.

In the case of the Astacia family, also in Monroe Township, Rothman said it was reported that Mrs. Astacia's 21-year-old daughter and 16-year-old son were working in a chicken-cleaning factory in Vineland for 50 hours per week, with a take-home pay of only \$38.

"Again, this is an instance of public agencies not doing their job or passing the buck," Rothman charged. "I have information that county welfare knew of the situation at least since August."

Rothman said some county welfare workers agreed with his office and SCOPE that some farmers exploit workers, but feel powerless to do anything about it.

1931

mexican americans

and the administration
of justice in
the southwest

United States Commission on Civil Rights

March 1970

THE U.S. COMMISSION ON CIVIL RIGHTS
Washington, D.C., March 1970

THE PRESIDENT
THE PRESIDENT OF THE SENATE
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES
SIRS:

The Commission on Civil Rights presents this report to you pursuant to Public Law 85-315 as amended.

Under authority vested in this Commission by the Civil Rights Act of 1957 as amended, we have appraised allegations that American citizens of Mexican descent in five Southwestern States are being denied equal protection of the law in the administration of justice. We have found, through extensive field investigations during 1967 and 1968, three State Advisory Committee meetings in 1968, and a Commission hearing in 1968, all in that section of the country, that there is widespread evidence that equal protection of the law in the administration of justice is being withheld from Mexican Americans.

Our investigations reveal that Mexican American citizens are subject to unduly harsh treatment by law enforcement officers, that they are often arrested on insufficient grounds, receive physical and verbal abuse, and penalties which are disproportionately severe. We have found them to be deprived of proper use of bail and of adequate representation by counsel. They are substantially underrepresented on grand and petit juries and excluded from full participation in law enforcement agencies, especially in supervisory positions.

Our research has disclosed that the inability to communicate between Spanish-speaking American citizens and English-speaking officials has complicated the problem of administering justice equitably.

We urge your consideration of the facts presented and of the recommendations for corrective action in order to assure that all citizens enjoy equal protection as guaranteed by the Constitution of the United States.

Respectfully yours,

REV. THEODORE M. HESBURGH, C.S.C. *Chairman.*
STEPHEN HORN, *Vice Chairman*
FRANKIE M. FREEMAN
HECTOR P. GARCIA, M.D.*
MAURICE B. MITCHELL
ROBERT S. RANKIN

HOWARD A. GLICKSTEIN, *Staff Director.*

*No longer member of the Commission.

PREFACE

The U.S. Commission on Civil Rights undertook this study against a background of written complaints and allegations at Commission hearings and at meetings of the Commission's State Advisory Committees that Mexican Americans¹ in the Southwest² were being subjected to discrimination by agencies of law enforcement and in the administration of justice.³ The alleged discrimination included physical and verbal abuse and harassment by law enforcement officers; exclusion from grand and petit juries; improper and discriminatory use of bail; lack of and inadequate representation by counsel; and employment of disproportionately low numbers of Mexican Americans in law enforcement agencies—particularly in higher ranking positions.

The objective of this Commission study was to determine what, if any, factual basis existed for these allegations. In the course of the study, Commission staff attorneys conducted field investigations beginning in the latter part of 1967

¹ The term "Mexican American" refers to persons living in the United States who are themselves of Mexican origin or whose parents or more remote ancestors came to the United States from Mexico or whose antecedents resided in those parts of the Southwestern United States which were once part of the Mexican Nation. This is the most common designation used in the Southwestern States. Others are "Spanish American," "Latin," and "Latin American."

The term "Spanish surname or surname" is used in this report where material is from a secondary source which uses this term or is based on the 1960 Census of Population of the United States which used this term to designate persons with Spanish surnames. In the Southwestern States, the vast bulk of this group is Mexican American.

The term "Anglo" is used in this report, as it is in the Southwest, to refer to white persons who are not Mexican American or members of another Spanish surnamed group. The term has no derogatory connotations as used in the Southwest or in this report.

² Arizona, California, Colorado, New Mexico, and Texas.

³ Section 104 (a) (2) and (3) of the Civil Rights Act of 1957, (71 Stat. 634), as amended, provide:

Sec. 104. (a) The Commission shall—

(2) study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, or national origin, or in the administration of justice;

(3) appraise the laws and policies of the Federal Government with respect to denials of equal protection of the laws under the Constitution because of race, color, religion, or national origin, or in the administration of justice. . . .

Prior reports of the Commission dealing with the administration of justice include *Justice*, Vol. 5, 1961 Statutory Report; *Civil Rights: Interim Report of the U.S. Commission on Civil Rights* (1963); and *Law Enforcement: A Report on Equal Protection in the South* (1965). Reports of the Commission's State Advisory Committees which deal with this subject include: *Report on California: Police-Minority Group Relations, 1963*; *Police-Community Relations in Peoria, Illinois* (1966); *The Administration of Justice in Starr County, Texas* (1967); *Employment, Administration of Justice, and Health Services in Memphis-Shelby County, Tennessee* (1967); *Civil Rights in Oakland, California* (1967).

and continuing in 1968, in which they interviewed approximately 450 persons in Arizona, California, Colorado, New Mexico, and Texas. Persons interviewed included law enforcement officers, probation officers, prosecuting attorneys, judges, public defenders, attorneys in private practice, leaders of Mexican American organizations, and private citizens. Two State Advisory Committee meetings were held in 1968 in New Mexico specifically to gather information for this study. At these meetings 46 persons, including law enforcement officers, attorneys, and private citizens made statements and were questioned by Committee members and staff. A similar State Advisory Committee meeting was held in California in August 1968, at which 21 persons appeared.

At a Commission hearing held in San Antonio, Texas, in December 1968, which dealt exclusively with the problems of Mexican Americans, sworn testimony was received from 17 witnesses, including private citizens, law enforcement officers, and attorneys, concerning the administration of justice.

The resources of the Commission did not permit a comprehensive survey in response to allegations of exclusion of Mexican Americans from juries. The Commission, however, contracted with the California Rural Legal Assistance, Inc. (CRLA), for a study of service by Mexican Americans on grand juries in selected California counties. The CRLA report, which is printed as an appendix to this report, is summarized in the text.

A questionnaire was mailed to 793 law enforcement agencies in the five States, including nine State agencies, 168 county sheriffs' offices, and 616 municipal police departments seeking information regarding procedures for recruitment and selection of officers, the extent to which Mexican Americans were employed, policies on officer assignment and training, procedures for dealing with complaints against officers, as well as information on police-community relations. The counties selected were those having a minimum of 10 percent Spanish surnamed population and the municipalities selected were municipalities within these counties having a minimum total population of 3,000. A total of 331 questionnaires was returned to the Commission, of which 280 contained sufficient information for tabulation.

Conclusion

This report paints a bleak picture of the relationship between Mexican Americans in the Southwest and the agencies which administer justice in those States. The attitude of Mexican Americans toward the institutions responsible for the administration of justice—the police, the courts, and related agencies—is distrustful, fearful, and hostile. Police departments, courts, the law itself are viewed as Anglo institutions in which Mexican Americans have no stake and from which they do not expect fair treatment.

The Commission found that the attitudes of Mexican Americans are based, at least in part, on the actual experience of injustice. Contacts with police represent the most common encounters with the law for the average citizen. There is evidence of police misconduct against Mexican Americans. In the Southwest, as throughout the Nation, remedies for police misconduct are inadequate.

Acts of police misconduct result in mounting suspicion and incite incidents of resistance to officers. These are followed by police retaliation, which results in escalating hostilities.

The jury system is also not free from bias against Mexican Americans. At times, bail is set discriminatorily and inequalities in the availability of counsel lead to other injustices in trial and sentencing. Skilled interpreters, sensitive to the culture and background of Mexican Americans, are rare in areas of the Southwest where Mexican Americans predominate. Finally, Mexican Americans have been excluded from full participation in many of the institutions which administer justice in the Southwest. Mexican Americans are underrepresented in employment in police departments, State prosecutor's offices, courts, and other official agencies. Consequently, these agencies tend to show a lack of knowledge about and understanding of the cultural background of Mexican Americans.

The Commission recognizes that individual law enforcement officers and court officers have made positive efforts to improve the administration of justice in their communities. The fact

however, that Mexican Americans see justice being administered unevenly throughout the Southwest tends to weaken their confidence in an otherwise fair system. In addition, the absence of impartial tribunals in which claims of mistreatment can be litigated to a conclusion accepted by all sides tends to breed further distrust and cynicism.

This report is not intended to burden the agencies of justice with responsibilities which lie with society as a whole. The police and the courts cannot resolve the problems of poverty and of alienation which play a large part in the incidence of crime which they attempt to control; and the police and the courts often treat legitimate demands for reform with hostility because society as a whole refuses to see them as justified. The Commission recognizes that the job of law enforcement is extremely difficult. Nevertheless, it finds no justification for illegal or unconstitutional action by the very persons who are responsible for the enforcement of the law.

This report shows that Mexican Americans believe that they are subjected to such treatment again and again because of their ethnic background. Moreover, their complaints bear striking similarities to those of other minority groups which have been documented in earlier Commission studies of the administration of justice. The inequalities suffered by black Americans and Indians described in the Commission's 1961 "Justice" report and its 1965 "Law Enforcement" report, are of a similar nature. Consequently, the Commission's recommendations in this report are designed to be sufficiently broad to be applicable to all minority groups.

The essence of this situation is summed up in the words of a Mexican American participant in the California State Advisory Committee meeting, who said: "I think that my race has contributed to this country with pride, honor, dignity, and we deserve to be treated as citizens today, tomorrow, and every day of our lives. I think it is the duty of our Government to guarantee the equality that we have earned."

Findings

1. Police misconduct

There is evidence of widespread patterns of police misconduct against Mexican Americans in the Southwest. Such patterns include:

- (a) incidents of excessive police violence against Mexican Americans;
- (b) discriminatory treatment of juveniles by law enforcement officers;
- (c) discourtesy toward Mexican Americans;
- (d) discriminatory enforcement of motor vehicle ordinances;
- (e) excessive use of arrests for "investigation" and of "stop and frisk";
- (f) interference with attempts to rehabilitate narcotics addicts (pp. 2-12).

2. Inadequate protection

Complaints also were heard that police protection in Mexican American neighborhoods was inadequate in comparison to that in other neighborhoods (pp. 12-13).

3. Interference with Mexican American organizational efforts

In several instances law enforcement officers interfered with Mexican American organizational efforts aimed at improving the conditions of Mexican Americans in the Southwest (pp. 14-18).

4. Inadequacy of local remedies for police malpractice

Remedies for police malpractice in the Southwest were inadequate:

- (a) in most Southwestern cities the only places where individuals can file complaints against the police are the police departments themselves. Internal grievance procedures did not result in adequate remedies for police malpractice;
- (b) some cities in the Southwest have established independent or quasi-independent police review boards but these have not provided effective relief to complainants;
- (c) civil litigation by Mexican Americans against police officers accused of civil rights violations is infrequent;
- (d) there are few instances of successful local prosecutions of police officers for unlawful acts toward Mexican Americans;
- (e) there have been instances of retaliation

against Mexican Americans who complained about law enforcement officers to the local police department or to the FBI (pp. 20-21).

5. Federal remedies

(a) Agents of the Federal Bureau of Investigation have often failed to interview important witnesses in cases of alleged violation of 18 U.S.C. 242 or interviewed such witnesses in a perfunctory and hostile manner.

(b) More aggressive efforts to implement 18 U.S.C. 242 by the Department of Justice are needed (pp. 28-33).

6. Underrepresentation of Mexican Americans on juries

There is serious and widespread underrepresentation of Mexican Americans on grand and petit State juries in the Southwest:

(a) neither lack of knowledge of the English language nor low-incomes of Mexican Americans can explain the wide disparities between the Mexican American percentage of the population and their representation on juries;

(b) judges or jury commissioners frequently do not make affirmative efforts to obtain a representative cross section of the community for jury service;

(c) the peremptory challenge is used frequently both by prosecutors and defendants' lawyers to remove Mexican Americans from petit jury venires.

The underrepresentation of Mexican Americans on grand and petit juries results in distrust by Mexican Americans of the impartiality of verdicts (pp. 36-46).

7. Bail

Local officials in the Southwest abuse their discretion:

(a) in setting excessive bail to punish Mexican Americans rather than to guarantee their appearance for trial;

(b) in failing to give Mexican American defendants an opportunity to be released until long after they were taken into custody;

(c) by applying unduly rigid standards for release of Mexican Americans on their own recognizance where such release is authorized.

In many parts of the Southwest, Mexican American defendants are hindered in their at-

tempts to gain release from custody before trial because they cannot afford the cost of bail under the traditional bail system (pp. 48-52).

8. Counsel

There are serious gaps in legal representation for Mexican Americans in the Southwest:

(a) the lack of appointed counsel in misdemeanor cases results in serious injustices to indigent Mexican American defendants;

(b) even in felony cases, where counsel must be provided for indigent defendants, there were many complaints that appointed counsel often was inadequate;

(c) where public defender's offices are available to indigent criminal defendants, they frequently did not have enough lawyers or other staff members to adequately represent all their clients, many of whom are Mexican Americans;

(d) in parts of the Southwest there are not enough attorneys to provide legal assistance to indigent Mexican Americans involved in civil matters;

(e) many lawyers in the Southwest will not handle cases for Mexican American plaintiffs or defendants because they are "controversial" or not sufficiently rewarding financially;

(f) despite the enormous need for lawyers fluent in Spanish and willing to handle cases for Mexican American clients, there are very few Mexican American lawyers in the Southwest (pp. 54-59).

9. Attitudes toward the courts

Mexican Americans in the Southwest distrust the courts and think they are insensitive to their background, culture, and language. The alienation of Mexican Americans from the courts and the traditional Anglo-American legal system is particularly pronounced in northern New Mexico (pp. 60-62).

10. Language disability

Many Mexican Americans in the Southwest have a language disability that seriously interferes with their relations with agencies and individuals responsible for the administration of justice:

(a) there are instances where the inability to communicate with police officers has resulted

in the unnecessary aggravation of routine situations and has created serious law enforcement problems;

(b) Mexican Americans are disadvantaged in criminal cases because they cannot understand the charges against them nor the proceedings in the courtroom;

(c) in many cases Mexican American plaintiffs or defendants have difficulty communicating with their lawyers, which hampers preparation of their cases;

(d) language disability also adversely affects the relations of some Mexican Americans with probation and parole officers (pp. 66-71).

11. Interpreters

Interpreters are not readily available in many Southwestern courtrooms:

(a) in the lower courts, when interpreters were made available, they are often untrained and unqualified;

(b) in the higher courts, where qualified interpreters were more readily available, there has been criticism of the standards of their selection and training and skills (pp. 71-74).

12. Employment by law enforcement agencies

Employment of Mexican Americans by law enforcement agencies throughout the five Southwestern States does not reflect the population patterns of these areas:

(a) neither police departments, sheriffs' offices, nor State law enforcement agencies employ Mexican Americans in significant numbers;

(b) State and local law enforcement agencies in the Southwest do not have programs of affirmative recruitment which would attract more Mexican American employees;

(c) failure to employ more Mexican Americans creates problems in law enforcement, including problems in police-community relations (pp. 78-83).

13. Courts and prosecutors

Other agencies in charge of the administration of justice—courts, district attorneys' offices, and the Department of Justice—also have significantly fewer Mexican American employees than the proportion of Mexican Americans in the general population (pp. 84-86).

RECOMMENDATIONS LAW ENFORCEMENT

Recommendation 1—Federal Civil Actions

The Commission recommends that Congress enact legislation authorizing civil actions by the Attorney General against law enforcement officers and agencies to enjoin patterns of discriminatory treatment as well as interference with lawful organizational efforts of minorities in furtherance of their civil rights.

Justification

There is at present no authority in the Department of Justice to deal with patterns of police misconduct. The criminal statutes designed to prevent violations of citizens' rights by State and local officers acting under color of law, 18 U.S.C. 241 and 242, only apply to individual acts of misconduct or to conspiracies to commit such acts. The Department receives many complaints of violations of individual rights, such as unlawful arrest, unreasonable detention for investigation, or the excessive use of force which may not warrant prosecution or show the existence of a conspiracy, but which do show a pattern of police misconduct. In these cases, if the local law enforcement agencies do not take steps to prevent the recurrence of such practices, the authority proposed herein would enable the Attorney General to remedy this situation.

Systematic patterns of discriminatory police action have been the basis for lawsuits by individual plaintiffs as members of a class. In *Lankford v. Gelston*, 364 F. 2d 197 (4th Cir. 1966), the Fourth Circuit held that the Civil Rights Act of 1866 (42 U.S.C. 1983) authorized an injunction against the police commissioner of Baltimore, forbidding the continuation or repetition of widespread warrantless searches of Negro homes on the basis of unverified anonymous tips. Several current suits involve similar complaints. *Kidd v. Addonizio*, D.C.N.J. No. 899-68 July 1967; *Robinson v. Los Angeles Police Department*, D.C. Cal. Civ. No. 68-1763-R Nov. 1968 and *Figueroa v. County of Riverside*, CA 9th Cir. No. 23931, June 1969. Since these complaints allege denials of equal protection of the laws under the 14th amendment, the Attorney General may have power to intervene in these suits under Title IX of the Civil Rights Act

of 1964, which permits such intervention in cases of "general public importance." This power, however, does not negate the need for independent authority in the Department of Justice to initiate such law suits. Authorizing the Attorney General to sue would make the resources of the Department of Justice, which are superior to those of individual plaintiffs (especially in respect to investigation of departmental policies of law enforcement agencies), available at a much earlier stage. In addition, the Attorney General is informed concerning patterns or practices of discrimination through complaints filed with the Department and can make a more informed judgment than an individual on where to initiate such actions. Congress similarly recognized the limitations of private litigants to deal with discriminatory patterns in the areas of public accommodations, employment, and housing by empowering the Attorney General in the Civil Rights Acts of 1964 and 1968 to bring suits on his own initiative.

Recommendation 2—Municipal Liability

The Commission recommends that Congress amend 42 U.S.C. § 1983, which provides Federal civil remedies for police malpractice, to make the governmental bodies who employ officers jointly liable with those officers who deprive persons of their civil rights.

Justification

This recommendation was made in the 1961 and 1965 Commission reports dealing with justice and law enforcement. It seeks to assure the victim in a police misconduct case as adequate Federal remedy against a defendant (the city or county) who has the money to pay a judgment for damages (as individual officers often do not), who, like other employers, bears some responsibility for the actions of persons he has employed, and who is in a position to take corrective action to prevent further violations of the kind complained of. At present, although a Federal court may issue an injunction against governmental bodies under § 1983, no liability in damages exists. *Monroe v. Pape*, 365 U.S. 167 (1961).

It has been argued that public entities are liable for police malpractice under 42 U.S.C. § 1983 to the same extent that they would be liable under State law, *Figueroa v. County of*

Riverside (supra) but this position has not been generally adopted by the courts. In any event although the principle that governmental bodies should be liable for the torts of their employees has gained increased adherence in recent years,¹ immunity under State law is still quite prevalent and, where governmental liability for police misconduct exists, it varies in kind and extent.

Federal power to enforce the equal protection clause of the 14th amendment would appear sufficiently broad to reach governmental bodies. The Supreme Court has held that Congress may use any rational means to protect citizens from denials of equal protection. *South Carolina v. Katzenbach*, 383 U.S. 301 (1966), *Katzenbach v. Morgan*, 384 U.S. 641 (1966). This proposal would not only give citizens an effective remedy against denials by individual governmental officials, but it might have the effect of inducing governmental entities to take steps to prevent such violations.

Several State bar associations have recommended that States and municipalities may be induced to take such steps in exchange for a relaxation of the rule excluding illegally obtained evidence from criminal proceedings. The purpose of the exclusionary rule is to curb one variety of illegal police action, namely unconstitutional searches and seizures, *Mapp v. Ohio*, 367 U.S. 643 (1961). The New York County Lawyers Association and the Federal Bar Associations of New York, New Jersey, and Connecticut have suggested that where municipalities assume liability for police malpractice and establish effective procedures for redress of violations, important evidence obtained illegally but in good faith may be admissible in criminal prosecutions under careful safeguards. *Hear-*

ings of the Sub. on Criminal Laws and Procedures, Senate Committee on the Judiciary, 91st Cong., 1st Sess., at 225 to 227 (1969); 3 Criminal Law Bulletin 630 (1967).

Recommendation 3—Improved Federal Investigations

The Commission recommends that the Department of Justice review and revise its procedures for ascertaining whether there have been violations of 18 U.S.C. 241, 18 U.S.C. 242, and Title I of the Civil Rights Act of 1968, the statutes which impose criminal penalties for misconduct of police officers toward citizens. Such measures should include:

(a) the requirements of a full, rather than merely a preliminary investigation, by the Federal Bureau of Investigation in a higher percentage of cases before a decision is made that a complaint lacks prosecutive merit;

(b) increased supervision of the Bureau's investigative practices, including more frequent reinvestigation of complaints by the Department's attorneys.

Justification

In its 1961 *Justice* Report, the Commission discussed the need for a more vigorous policy of investigating and prosecuting violations of 18 U.S.C. 241 and 242. In 1965, the Commission noted some improvement but also noted that the number of prosecutions was still very low. U.S. Commission on Civil Rights *Justice* at 67; U.S. Commission on Civil Rights, *Law Enforcement* (1965) at 117. In the Southwest, the criticisms and suggestions of the Commission to the Department of Justice in 1961 and 1967 are still applicable. These recommendations follow Commission views expressed in those reports:

(a) a large number of cases are closed by the Department of Justice because of inadequate evidence in support of the plaintiff's complaint. Often, however, this inadequacy results from insufficient investigation of the complaint. In many cases, a full investigation could result in corroboration of the victim's allegations;

(b) the adequacy of the FBI's search for witnesses and general investigative practices can only be ascertained by more frequent reinvestigation by the attorneys of the Department of Justice.

¹ McQuillan, *Municipal Corporations*, Vol. 18, 53, 29a. The Federal Government is liable for many torts of its agents under the Federal Tort Claims Act of 1948, 28 U.S.C. 2671 et seq. Eight States—Illinois, Indiana, Kentucky, Minnesota, Ohio, Oregon, and Pennsylvania—have enacted statutes relating specifically to police activities which waive to some extent municipal immunity in this area. McQuillan, Vol. 18, 53, 79d. Of the five Southwestern States involved in this study, Texas and Arizona have not waived governmental immunity for torts. California has made public entities liable on a respondent superior basis in those cases in which their employees are liable. Cal. Gov. Code §§ 815, 815.2 (West 1966). In Colorado, public entities are authorized to insure their employees and agents against liability although immunity of the entity is not waived. Colo. Rev. Stats. § 72-16-2 (1963). New Mexico has a similar insurance statute, which provides that the employing public entity shall be liable for torts to the extent that it is covered by insurance. N. Mex. State. Ann. § 5-6-20. (1953).

Recommendation 4—Federal Enforcement Program

The Commission recommends that the Civil Rights Division increase the manpower available for prosecuting violations of 18 U.S.C. 241 and 242 by law enforcement officials, including:

- (a) the hiring of a number of criminal lawyers specializing in prosecution and
- (b) the establishment of a unit of independent investigators.

Justification

(a) In 1961, the Commission criticized the Department of Justice for not assigning sufficient priority to enforcement of 18 U.S.C. 241 and 242 (see n. 3, p. iv). Additional manpower was suggested. At present, although the Civil Rights Division is much larger than it was in 1961 [its authorized strength in the fall of 1969 was 117 attorneys] it has not assigned sufficient manpower for an effective, continuous program to enforce the statutes and to reinvestigate many complaints or to initiate investigations. In addition, until now few of the Division's lawyers have had specialized experience in criminal prosecutions. As a result, areas such as law enforcement in the Southwest have been comparatively neglected.

Under the September 24, 1969 reorganization of the Division, for the first time 15 attorneys and two research analysts have been assigned to the new Criminal Section with full-time responsibility to enforce a number of Federal criminal civil rights statutes, including 18 U.S.C. 242. Between 1964 and 1968, the Civil Rights Division received approximately 1,600 complaints of police brutality each year. Unless the complaint load decreases, it will be extremely difficult for 15 attorneys to implement a vigorous enforcement program.

(b) A recommendation for the establishment within the FBI of a special unit of investigators trained in civil rights work was made by the President's Committee on Civil Rights [the Truman Committee] in 1947 in its report "To Secure These Rights." The Commission's recommendation is a variation on that recommendation. A special unit is required because of the inadequacies which now exist in the investigation of civil rights complaints and the absence of manpower to reinvestigate many complaints.

Enforcement of the criminal statutes in this area can only be as effective as the investigations conducted under them. However, the 1947 Committee's recommendation did not go far enough. The investigators should be directly responsible to the office in charge of enforcing the statutes. They may be detailed from within the FBI or hired from outside sources.

Recommendation 5—State Remedies

The Commission recommends that States take steps to control and lessen the injuries to individual rights created by police abuse of authority. Such steps should include administrative procedures for rapid and adequate compensation of claims for injuries suffered through police malpractices.

Justification

States share with the Federal Government responsibility for providing equal protection of the laws to their citizens. Administrative compensation for malpractice claims is suggested because a complaint to the police department or to a police review board can only result in disciplinary action against an officer, which does not compensate the victims of police misconduct for medical expenses, pain, suffering, and other damages. Liability of municipalities under 42 U.S.C. 1983 (recommended above) is a somewhat similar remedy to this but more difficult and expensive for an individual to obtain. The State remedy would be in addition to the Federal remedy, although a victim could not recover twice for the same injuries.

Recommendation 6—Local remedies

The Commission recommends that internal complaint procedures of police departments be handled by independent agencies or boards within the departments with an independent investigative staff and the power to recommend appropriate disciplinary action against officers guilty of misconduct. A complainant should have a right to be present at the hearings of such agencies or boards and be represented by counsel who may cross-examine witnesses.

Justification

Similar recommendations were made by the President's Commission on Law Enforcement and the Administration of Justice (the Crime Commission) and endorsed by the National

Advisory Commission on Civil Disorders (the Kerner Commission).

The Crime Commission emphasized the need for adequate procedures for full and fair processing of citizen grievances. The same Commission's Task Force on the Police stated that police investigative procedures and hearing procedures needed substantial improvement to achieve fairness to all parties. More recently, the Kerner Commission specifically recommended independent investigations and complaint participation in hearings.

JURIES

Recommendation 1—Federal legislation relating to State juries

The Commission recommends that Congress enact legislation to insure that no person be excluded from service as a grand or petit juror on State juries on account of race, color, religion, sex, national origin, or economic status. This statute should require the revision of State jury selection systems, substituting random selection of jurors on the basis of objective and comprehensive lists, such as voter registration lists or actual voting lists, for keyman systems or other systems vesting undue discretion in judges, jury commissioners, or clerks. The Federal statute should also:

(a) require State courts to keep records of jury selection by race and major ethnic categories, including Spanish surname. Such records also should include the race and major ethnic category of jurors peremptorily challenged;

(b) require State courts, where representative panels result in an unrepresentative jury because members of a group are eliminated by English language disability, to call a proportionately larger number of persons from that group as veniremen, to insure a fair chance of a representative jury;

(c) require the State to increase the pay of jurors and shorten the terms of grand juries, to facilitate service by poor people.

Justification

The Commission's findings indicate that the same rationale which led to the adoption of legislation requiring random selection for Federal juries is applicable to State juries: discrimination in selection can only be avoided by eliminat-

ing the bias inherent in the keyman system of selection and the substitution therefore of a system of random selection. Federal power to guarantee nondiscrimination in juries, under the 14th amendment, is broad enough to allow Congress to fashion any rational means to remedy discrimination including changes in the States' methods of selection of jurors (*South Carolina v. Katzenbach*, 383 U.S. 301 (1966); *Katzenbach v. Morgan*, 384 U.S. 641, (1966)).

(a) the recordkeeping requirement is necessary to insure enforcement of the law's basic purpose, to insure representative juries. It is particularly important to keep records of the use of the peremptory challenge by race or other census category because it is not possible to prove the discriminatory use of the challenge without such records;

(b) the proposal to call a proportionately higher number of Mexican American veniremen would go into effect in those counties in which even under random selection a disproportionate number of Mexican Americans are disqualified from jury service by their inability to meet the English language requirement. Affirmative efforts to select representative juries, which take into account the race of veniremen, have been upheld in court decisions. (See *Brooks v. Beto*, 366 F.2d 1 (5th Cir. 1966), cert. den., 386 U.S. 975 (1967); *Rabinowitz v. U.S.* 366 F.2d 34 (1966));

(c) the proposal to increase jury pay is based on the theory that to set jury pay levels so low as to make it practically impossible for poor people to serve on juries without considerable financial hardship results in juries which are not representative of all elements of the community. The proposal to shorten terms is based on the fact that some States, for example, California, require grand jurors to sit for a whole year. Poor people cannot afford to serve for such long periods of time at low pay.

BAIL

Recommendation 1—Bail reform

The Commission recommends that the States should enact bail reform legislation designed to ensure that indigent defendants will not be unfairly detained in jail until trial because they are unable to afford the traditional cash bail.

Justification

The traditional bail system, which requires a defendant to make a cash deposit or bond before he can be released, unfairly discriminates against those defendants who are too poor to meet such financial conditions. As a result, many indigent defendants who probably would appear for trial remain in jail until trial while other defendants charged with similar crimes go free because they can afford bail. In addition, defendants who cannot afford bail and remain in jail until they are tried are hampered in their efforts to prepare for trial and their family lives and employment are unnecessarily disrupted.

The President's Commission on Law Enforcement and Administration of Justice recommended that the States enact bail reform legislation patterned after the Federal Bail Reform Act of 1966.² That act requires that every person charged with a noncapital offense must be released on his personal recognizance unless a judicial officer determines, upon showing of good cause, that the release will not assure the appearance of the accused for trial.

In order to ensure reform of their bail practices, the States will need personnel to evaluate defendants' eligibility for release, and to supervise them after their release. Funds for such programs are available from the Law Enforcement Assistance Administration of the Department of Justice (LEAA).³

Recommendation 2—Prompt proceedings

All persons should be brought before a judicial officer to be charged and given an opportunity to seek release on bail or on their own recognizance without unnecessary delay.

Justification

In some communities criminal defendants are held for periods of time ranging from a few hours to several days before being charged or given an opportunity to seek release on bail or on their own recognizance. Each arrested person should have an opportunity to secure his

release from custody without unnecessary delay in order to avoid disruption of his life and the life of his family and to prevent improper detention. The Federal rule requires judicial presentation "without unnecessary delay"⁴, and has been interpreted as ordinarily requiring production of the accused in less than 24 hours.⁵ According to the President's Crime Commission it is the practice in 29 States as well.⁶ The ultimate responsibility for determining what is "unnecessary delay" must remain with the courts and will be determined in the light of all the facts and circumstances of each case.

REPRESENTATION BY COUNSEL

Recommendation 1—Legal Assistance

Legal assistance should be made available to every indigent defendant immediately after his arrest in all criminal cases arising in State and local courts regardless of the nature of the charge.

In order to implement this recommendation, the State should establish statewide systems of legal representation for defendants in all criminal cases.

Justification

Serious injustices arise in the lower courts because of the lack of adequate legal representation for indigents. It has been recognized by most people familiar with the administration of criminal justice, including the Supreme Court of the United States, *Powell v. Alabama*, 287 U.S. 45 (1932), *Gideon v. Wainwright*, 372 U.S. 335 (1963), that representation by counsel is a necessary part of a fair trial in serious criminal cases. Yet, the consequences of even minor fines or short sentences can be extremely serious, too, and disproportionately so for indigent defendants and their families. For these reasons the States should provide adequate counsel for all indigent defendants, no matter what the offense with which they are charged.

The legal assistance to be provided by the States should be available immediately after the

² President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society*, at 132 (1967).

³ U.S. Department of Justice, Law Enforcement Assistance Administration, *Guide for State Planning Agency Grants* (1968) at 2 (hereinafter cited as SPA Guide). For the text of the act under which such grants are made, see Appendix A.

⁴ Fed. R. Crim. Pro., 5(b).

⁵ *Mallory v. United States*, 354 U.S. 449 (1957).

⁶ President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: The Courts* 84 (1967).

defendant's arrest to ensure that he is given an opportunity to be released on bail or on his own recognizance and to protect his rights through other early, but critical, stages of the judicial process.

The initial responsibility for the establishment of programs of adequate legal representation rests with the States. California, for example, provides counsel to all indigent criminal defendants who request such assistance, either through the public defender's office or by assigned counsel. Federal funds are currently available from LEAA for such programs.⁷ State planning agencies should include such programs in their requests. In Fiscal Year 1969 only a small amount of the approximately \$25 million distributed by LEAA was designated for use in a few States in programs to provide indigent defendants with legal assistance.

Some of the States might have an initial problem providing legal assistance to all indigent criminal defendants because of manpower shortages. The Commission suggests that States and localities consider, among other possible sources of manpower, using law students under proper supervision to assist in representing defendants in lower courts. This has already been done in some communities. The Boston University Roxbury Defender Project provided legal representation by third year law students for indigent defendants in misdemeanor cases under faculty supervision. A similar project has been underway at Harvard University Law School.⁸

The American Bar Association, the Urban Coalition, and other groups concerned about the quality of legal services for indigents are urged to continue their efforts to see that such assistance is provided wherever it is necessary.

Recommendation 2—Legal Services Programs

Congress should amend the Economic Opportunity Act of 1964 to repeal the provision which prohibits Legal Services Programs (LSP) funded by the Office of Economic Opportunity (OEO) from representing defendants in criminal cases.

Justification

A possible source of legal manpower to represent criminal defendants is the OEO Legal Services Program. Under existing legislation, however, these lawyers are barred from representing anyone indicted (or proceeded against by information) for the commission of a crime, except in extraordinary circumstances where the Director of the Office of Economic Opportunity has determined that adequate legal assistance will not be available for an indigent defendant unless such services are made available.⁹

Recommendation 3—Training programs for Mexican American lawyers

Congress should substantially increase the funds available to the Office of Economic Opportunity (OEO) for programs designed to help law schools recruit and train Mexican American law students.

Justification

There is a severe shortage in the Southwest of Mexican American and, generally, Spanish-speaking lawyers. Currently there are some programs, both publicly and privately financed, designed to recruit and train minority group lawyers, including Mexican Americans. The Council on Legal Education Opportunity (CLEO) has received grants of \$493,530 from the Office of Economic Opportunity and a Ford Foundation grant of \$450,000. The Mexican American Legal Defense Fund also gives law scholarships. However, if the gap between the actual number of Mexican American lawyers and the number needed is to be closed these programs will have to be substantially increased.

LANGUAGE DISABILITY AND INEQUALITY BEFORE THE LAW

Recommendation 1—Interpreters

The States in the Southwest should establish programs for the recruitment, training, and employment of court interpreters to be used in areas where there are large concentrations of Mexican Americans.

Justification

A serious problem in the Southwest is the absence of qualified interpreters in courtrooms

⁷ SPA guide at 2.

⁸ President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: The Courts* (1967) at 82.

⁹ 42 U.S.C. 2809(a) (3).

handling large numbers of Mexican Americans who have difficulty communicating in the English language. A minimum of fairness requires that all persons concerned be able to understand what is being said. In some communities, however, the courts do not have interpreters or merely rely on untrained citizens or on regular court or law enforcement personnel to act as official interpreters. Comparable problems arise in other parts of the United States for primarily Spanish-speaking Puerto Ricans and Cubans. In areas with large concentrations of such groups similar steps should be taken to overcome the problems of language disability.

Federal funds for the recruitment, training and employment of court interpreters are available from LEAA.¹⁰

Recommendation 2—Bilingual personnel

(a) State and local governments in the Southwest should establish programs for training in conversational Spanish for those individuals responsible for the administration of justice in areas of the Southwest where there are large concentrations of Mexican Americans.

(b) Bilingual capability in Spanish and English should be recognized by Federal, State, and local agencies responsible for the administration of justice as a special qualification for employment in areas of the Southwest where there are large concentrations of Mexican Americans.

Justification

Many Mexican Americans in the Southwest have difficulty with English and are most comfortable using Spanish, while most law enforcement officers and court officials do not speak Spanish. This fact has led to misunderstanding and has sometimes resulted in injustices to Mexican Americans. Justice cannot be administered fairly or effectively if the officials responsible for its administration cannot communicate with a substantial segment of the community. Law enforcement officers, probation and parole officers, judges, and other officials responsible for the administration of justice in the Southwest should be trained in conversational Spanish in order to help bridge this gap.

Federal funds for the training of personnel in conversational Spanish are currently available from LEAA.¹¹

Another step that can be taken to improve communication between Mexican Americans and agencies administering justice is the employment of bilingual personnel. In order to attract such personnel it is necessary to recognize that their bilingual capabilities are a unique advantage that makes them particularly well qualified for the job. Special steps must be taken to attract them to these positions. This can be done through a variety of methods such as incentive pay, employment bonuses, or other programs that recognize their special qualification.

PARTICIPATION

Recommendation 1—Affirmative recruitment program

The Commission recommends that State and local law enforcement agencies establish:

(a) affirmative recruitment programs specially designed to increase the number of Mexican American law enforcement personnel;

(b) training programs to increase the ability of Mexican Americans and other minority persons employed by law enforcement agencies to obtain promotions to supervisory positions.

Justification

Additional Mexican American officers can contribute significantly in reducing the present feeling of apprehension and distrust which generally pervades the Mexican American community toward law enforcement agencies. Such officers often can serve as on-the-spot interpreters and thus ease tense situations even, in some instances, preventing miscarriages of justice which result from misunderstandings.

In the report of the Kerner Commission a reference is made to the Crime Commission Police Task Force's finding that Negro policemen help provide insight into ghetto problems; often can provide advance information in anticipation of tensions and grievances that might lead to disorders; and are particularly effective in bringing disorders under control once they do break out.¹² The Kerner Commission's report continued by pointing out that more Negro police officers were needed at all levels and ranks,

¹⁰ SPA guide at 2.

¹¹ *Id.*

¹² Report of the Advisory Commission on Civil Disorders at 165.

and recommended that police departments intensify their efforts to recruit more Negroes, review their promotion policies to ensure that Negro officers are afforded equitable promotion opportunities, and ascertain that Negro officers are assigned on a fully integrated basis visible to the Negro community.¹³ These findings and recommendations by the Kerner Commission support the Commission's recommendation for efforts to increase the number of Mexican American law enforcement officers at all levels of authority. In its recent report on State and local employment, the Commission discussed in detail the component elements of a successful affirmative action program. That discussion may be useful to agencies seeking to implement this recommendation.¹⁴

We recognize that in some cases police departments will have difficulty recruiting members of minority groups. The recent report of the Commission on equal employment opportunity in State and local government, indicated that . . . The tension, suspicion, and hostility which exists between the Negro community and the police department are obstacles to the recruitment of black policemen."¹⁵

Nevertheless, those departments that have made an effort to reverse their image in the minority communities and who have used special recruiting efforts designed to attract minority applicants have had a degree of success.¹⁶ The Commission believes that similar efforts especially designed to attract Mexican American applicants will have a similar effect in increasing the number of Mexican American law enforcement personnel.

Recruitment of more Mexican Americans by law enforcement agencies would not affect the agencies' policies unless Mexican Americans also have opportunities to be promoted to supervisory positions. If they are not qualified for promotion because of lack of education or training, agencies should provide them with opportunities to make up for such deficiencies. Such programs should offer training both to recruits and to present law enforcement officers desirous of advancing to supervisory positions. Federal

funds under LEAA are available for this purpose.¹⁷

Recommendation 2—Qualifications

Law enforcement agencies should review their qualifications for appointment and eliminate those which may not be job-related and which may tend to discriminate against Mexican American applicants.

Justification

Both Federal and private industry officials have informed the Commission in the past that many job requirements have little or no relationship to the actual work to be performed. For example, many private companies have abolished some of their application requirements, since they have determined that they had little or no bearing on actual job performance. Rather, the majority of the job requirements of new employees was readily attainable through on-the-job training. If such techniques can be utilized to train semi-skilled and skilled technicians, the Commission believes that similar techniques can be developed and employed to properly train Mexican American law enforcement applicants.

In its report *For ALL the People*, the Commission on Civil Rights has pointed out the difficulty that many police applicants encounter in taking lengthy written intelligence tests. Furthermore, the validity of such tests has not been proven and at least one police department in a major city—Detroit—is now using a general intelligence test, which takes only 12 minutes to complete, in contrast to the former 2½ hour intelligence test.¹⁸

Age, weight, height and vision requirements are invariably more stringent for police applicants than elsewhere in State or local government employment. However, when police departments have made special efforts to recruit minorities they have seen fit to make many of these requirements more flexible. For example, in an effort to recruit more Negro officers, Detroit has recently liberalized its age, height, and vision requirements.¹⁹ Other large cities

¹³ *Id.* at 166.

¹⁴ *For ALL The People* at 121-23.

¹⁵ *Id.* at 72.

¹⁶ *Id.* at 72-73.

¹⁷ Section 301(b) and 406(b) of the Omnibus Crime Control and Safe Streets Act of 1968.

¹⁸ *For ALL the People* at 74.

¹⁹ *Id.* at 75.

have reduced their height requirement from 5'9" to 5'7", in response to pressure from their Spanish-speaking communities.²⁰

The elimination of lengthy written tests and the substitution of shorter, more meaningful job-related tests, together with the relaxation of certain physical qualifications, can result in the ultimate hiring of greater numbers of Mexican American applicants.

Recommendation 3—Judges

The President of the United States and the Governors of the five Southwestern States of Arizona, California, Colorado, New Mexico, and Texas should use their powers to appoint qualified Mexican American attorneys to the Federal and State courts.

Justification

The Commission is aware that, with the exception of Colorado, virtually all of the State judges and justices are elected. However, deaths, resignations, and retirements do afford Governors some opportunity for judicial appointments, and the Commission urges them to use their appointive powers to increase the number of Mexican American judges.

Recommendation 4—Department of Justice

The Department of Justice, including the Federal Bureau of Investigation, should take affirmative action under its continuing equal employment opportunity program both to hire additional Mexican Americans in the Southwest and particularly to train and promote their present Southwestern Mexican American employees into supervisory and professional level positions. The Civil Service Commission should review and evaluate the equal employment op-

portunity of the Department of Justice to ensure that this program will:

... provide the maximum feasible opportunity to employees to enhance their skills so they may perform at their highest potential and advance in accordance with their abilities; ...²¹

Justification

The employment statistics furnished the Commission on Civil Rights by the Department of Justice clearly show the disparity that exists in the middle and higher grade categories, which include supervisors, lawyers, and other professional personnel. Virtually no Spanish surnamed employees are found in any of these categories.

Robert E. Hampton, Chairman of the United States Civil Service Commission, stated on August 8, 1969:

Despite significant gains in overall employment of minority group persons in the Federal service, too many of our minority employees are concentrated at the lower grade levels, victims of inadequate education and discrimination. . . .

On this same date, August 8, 1969, President Nixon issued Executive Order 11478, which restated the long standing Federal Government policy of equal employment opportunity, pointing out that each department and agency had the duty and responsibility of establishing and maintaining affirmative action programs designed to achieve the goals of equal employment opportunity. In this same Executive order, the President ordered the Civil Service Commission to provide leadership and guidance in the operations of such programs, and to review and evaluate such programs periodically to determine their effectiveness.

²⁰ *Id.* at 76.

²¹ Sec. 2, E.O. 11478, Aug. 8, 1969.

Senator MONDALE. The subcommittee stands in recess subject to the call of the Chair.

(Whereupon, at 11:30 a.m., the subcommittee adjourned to reconvene at the call of the Chair.)



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